

Making a Spanish Will

Key information on the various types of Spanish will, with an overview of the inheritance implications for a foreigner and their family resident in Spain...

All adults should make a will (**testamento**), irrespective of how large or small their assets (each spouse should make a separate will). If a foreigner dies without a will (intestate) in Spain, their estate may be automatically disposed of under Spanish law and the law regarding compulsory heirs applied.

A foreigner resident in Spain is usually permitted to dispose of their Spanish assets according to the law of their home country. A foreigner who has lived in Spain for a long time may find it necessary to create a legal domicile in their home country for the purpose of making a will.

A will made by a foreigner regarding Spanish assets isn't invalidated because it doesn't bequeath property in accordance with Spanish law, as Spanish law isn't usually applied to foreigners and the disposal of property (buildings or land) in Spain is governed by the law of the deceased's home country unless there is a dispute among the beneficiaries, in which case Spanish law is applied.

Law of Obligatory Heirs

Under Spanish law, a surviving spouse retains all assets acquired before marriage, half the assets acquired during the marriage and all personal gifts or inheritance which have come directly to the spouse.

The remaining assets must be disposed of under the Law of obligatory Heirs, **Ley de Herederos Forzosos**, which is as follows.

When a person dies leaving children, their estate is divided into three equal parts:

- One third must be left to the children in equal parts
- Another third must also be left to the children, but the testator decides how it is to be divided. A surviving spouse has a life interest in this second third and the children who inherit it cannot dispose of it freely until the surviving parent dies
- The final third can be freely disposed of

If a child dies leaving children of their own, they automatically inherit their share. If the deceased has no children the surviving parents have a statutory right to one-third of the estate if they have a surviving spouse or half of the estate if they don't.

Types of Will

There are three kinds of Spanish will, each of which is described below. Note that, where applicable, the rules relating to witnesses are strict and, if not followed precisely can render a will null and void.

Although it isn't necessary to have a Spanish will for Spanish property it's advisable to have a separate will for any country in which you own property. When a person dies, assets can be dealt with immediately under local law without having to wait for the granting of probate in another country (and the administration of the estate is also cheaper). Having Spanish will for your Spanish assets speeds up the will's execution and saves the long and complicated process of having a foreign will executed in Spain.

Note: If you have two or more wills, you must ensure that they don't contradict or invalidate one another. You should periodically review your will to ensure that it reflects your current financial and personal circumstances.

Open Will

An open will (***testamento abierto***) is the normal and most suitable kind of will for most people. It's unnecessary to employ a lawyer to prepare an open will, although it's usually advisable. It must, however, be prepared by a notary who is responsible for ensuring that it's legal and properly drawn up. Its contents must be known to the notary and three witnesses, who can be of any nationality; each of them must sign the will. The notary will give you a copy (***copia simple*** or ***copia autorizada***) and send a copy to the general registry of wills (***Registro General de Actos de Ultima Voluntad***) in Madrid. The original remains at the notary's office. If you don't understand Spanish, you will need an official translation into a language that you understand fluently.

Closed Will

A closed will (***testamento cerrado***) whose contents remain secret, must be drawn up by a Spanish lawyer to ensure that it complies with the Spanish law. You must take the will to a notary, who seals the envelope and signs it (as must two witnesses) and then files it and records it, as for an open will.

Holographic Will

A holographic will (***testamento ológrafo***) is a will made in your own handwriting or orally. If written, it must be signed and dated and must be clearly drafted in order to ensure that your wishes are absolutely clear. No witnesses or other formalities are required. It can be voluntarily registered with the registry or wills. On the death of the testator it must be authenticated before a judge, which will delay the will's execution. An oral will must be made in the presence of five witnesses, who must then testify to a notary the wishes of the deceased. The notary then prepares a written will and certifies it. For anyone with a modest Spanish estate, for example, a small holiday home in Spain, a holographic will is sufficient.

Cost and Procedure

Spanish wills can be drawn up by Spanish lawyers and notaries abroad, although it's cheaper to do it in Spain.

Executors aren't normal in Spain and, if you appoint one, it may increase the inheritance tax payable. However, if you appoint an executor you should inform your heirs so that they will know to inform them in the event of your death. It isn't advisable to appoint a lawyer who doesn't speak Spanish as your executor as he will have to instruct a Spanish lawyer (***abogado***), whose fees it will be impossible to control. If you appoint a lawyer as your executor, he's permitted to charge a maximum of five percent of the estate's value.

Your beneficiaries in Spain must produce an original death certificate or an authorised copy. If you die outside Spain, a foreign death certificate must be legally translated and notarised for it to be valid in Spain. The inheritance tax must be paid within six months of the death of the deceased; a request for further six months' extension may be filed although interest will be charged. Inheritance tax must be paid in advance of the release of the assets to be inherited in Spain, and beneficiaries may therefore need to borrow funds to pay the tax before they receive their inheritance. Note that the winding-up of an estate can take a long time in Spain.

Keep a copy of your will(s) in a safe place and another copy with your lawyer or the executor of your estate. Don't leave them in a bank safe deposit box, which in the event of your death is sealed for a period under Spanish law.

Note: In Spain, marriage doesn't automatically revoke a will as in some other countries. Spanish inheritance law is a complicated subject and it's

important to obtain professional legal advice when writing or altering your will(s).