

Signing a Spanish will: Things to know

1. Why is it important to have a Spanish will for your Spanish assets?

For residents

If you have assets in Spain and you are [resident](#) here, automatically the Spanish Inheritance law will apply when you die (new European law of the 17th of August 2015). According to the Spanish law, though, it unfortunately is NOT possible to leave your belongings to just anyone you would like.

The Spanish law is rather inflexible and obligates you to leave at least a part of your goods directly to your children (or other family members). This means that in this situation your longer living husband / wife or partner might be forced to sell the Spanish property you have together.

The good news is that this European law now gives European residents the possibility to have the personal / national law applied through signing a Spanish will with this specification. You can then leave your Spanish assets according to the law of your 'home' country.

For non-residents

If you have assets in Spain, but you are non-resident here, automatically your national inheritance law will apply when you die. In most cases this means that you can leave your Spanish assets to anyone you like -including your partner- and you won't be confronted with the problem described above.

A lot of people that buy in Spain already have a will in their home country that also includes foreign assets. But does this automatically mean that there's no need to also have a Spanish will?

The answer is yes and no. Legally your inheritance will be arranged correctly this way. But out of financial and practical point of view we do advise our clients to also sign a Spanish will when they own a Spanish property. The reason for this is that it will be more expensive to have all the documentation legally translated, officially apostilled and arranged between Spain and your home country. Besides of this, it's a time consuming and stressful bureaucratic process for your heir(s).

Residents & non-residents

The signing of a Spanish will also helps us to make good fiscal plan, thinking in the inheritance tax of your heirs. The location of your assets, your residency and the people that you are going to include in your will, define the tax liability of Inheritance Tax. The fiscal differences of the choices you make now can be severe for your future heirs.

2. To whom do I leave my Spanish assets?

We advise you to take a good moment to think about to whom you want to leave your Spanish assets, according to the law of your 'home' country.

Many people choose their husband / wife or partner as the first heir and secondly -if he / she wouldn't be alive anymore in time of your death- their children. It depends on your national law what will happen to your inheritance, if your children are married in joint assets. If there are (or in future could be) any grandchildren, you can point them as a third in line heirs in case that your children wouldn't be alive anymore. Mostly the term 'in equal parts' is used.

Of course you also have the possibility to leave (a part of) your belongings to a specified charity organization.

3. What more do I need to know?

Going to the notary

A will is a public document of the Spanish notary that can't be signed by a Power of Attorney. Our assistant will there for join you to our notary in Torrox-Costa. The will is going to be set up in both Spanish and English and she will check the correct translation, as the Spanish version is the only valid one.

Central registration

When you have signed your will, we will send you a digital copy and after a few days you can collect the authorized paper copy at our office. The original version will be sent to the national **General Register in Madrid (Registro de Actos de última voluntad)**. You can renew your will as many times as you like and this central register will always be updated with the latest version.

4. How does Spanish inheritance tax work?

- The applicable law for your will (Spanish or national/personal) doesn't have anything to do with the Inheritance Tax. If the property is situated in Spain, one needs to pay taxes in this country, taking into account the exemption rules.
- At this moment every autonomic region (like Andalucia, Madrid or Cataluña) has its own Inheritance Tax level and conditions.
- Inheritance Tax is a progressive tax which means the higher the value of the inheritance is, the higher the percentage of tax becomes. This percentage also depends on the official relationship to the deceased (partner and children pay less than friends, for example). The tax rate also depends on the total number of heirs.
- If you have a partner but aren't married, you have the possibility to be inscribed in the **Registro de Pareja Hecha** to obtain the same rights. This can save you a lot of tax money if one of you would die. (The inscription of similar registries or contracts in other countries aren't valid in Spain.)
- In many cases the tax to pay for widowers / widows or children will be zero. We strongly advice you, though, to have your personal situation checked as **small differences in your financial situation can have large tax consequences.**

For more information, please don't hesitate to contact C&D Solicitors (info@cdsolicitors.com). And the most important part of our advice: we wish you all live long!!!