



From Signing a Will to Inheriting an Estate in Spain

Index

1. The Spanish Will.....	1
<i>What is a Will?</i>	1
<i>Why is it important to sign a will in Spain?</i>	2
<i>Signing the Will</i>	2
<i>What happens if you are not in Spain, or you are not able to visit the notary?</i>	3
<i>What happens if you are in Spain, but you cannot visit a Spanish notary?</i>	3
2. Process after the death of the person who made the Will.....	3
<i>Death certificate</i>	4
<i>Last Will certificate</i>	4
<i>Insurance certificate</i>	4
<i>Original Will</i>	4
<i>Other documents for assets to be inherited</i>	4
3. The inheritance process (dealing with the Spanish deed and related taxes)	4
<i>Identify the Heirs</i>	4
<i>Signature of the Inheritance Deed</i>	4
<i>Inheritance tax</i>	5
<i>What happens if the deceased passed away many years ago and nothing has been done?</i>	5

1. The Spanish Will

What is a Will?

A Will is a legal document that specifies how a person's assets, property, and other belongings should be distributed after their death. In Spain, for a Will to be legally valid, it must comply with specific requirements outlined in the Spanish Civil Code. Using a notary to draft a Will is highly

recommended, as they ensure all legal formalities are followed, reducing the likelihood of disputes. Having a Will in Spain, especially for foreigners, significantly simplifies the inheritance process.

Why is it important to sign a will in Spain?

Signing a will is essential because it helps:

- Avoids Complex Paperwork: Without a Will, heirs must go through additional legal steps, making the process more complex.
- Save Time: A Will ensures clear asset distribution, reducing the time heirs spend in settling the estate.
- Lower Legal Costs: Minimizes the need for lengthy legal procedures.
- Prevent Family Disputes: Clearly outlines asset distribution, reducing potential conflicts among heirs.
- Simplify Cross-Border Inheritance: Particularly crucial for foreigners with assets in Spain, as it facilitates the management of local assets.

Signing the Will

Once you decide to make a Will in Spain, the next step is to visit a notary public, as signing the Will in front of a notary will guarantee its validity.

It is advisable to seek professional advice when preparing your Will. It's important to choose a firm that can assist you throughout the entire process. You need to be accurately informed about the legal and tax implications of the Will you are signing, especially as a foreigner in Spain. The firm should also be able to recommend notaries, arrange appointments, and ensure that all documents are prepared, signed, and registered correctly.

The process is as follows:

- 1.- Schedule an Appointment: Notaries in Spain typically require an appointment, which can be arranged by phone or online. It is advisable to schedule this well in advance.
- 2.-Prepare the Will: You will need to provide the notary with details about your heirs, your wishes regarding asset distribution, applicable legislation for your inheritance, and personal information such as your place and date of birth, address, and information about previous marriages and children. Based on your instructions, the notary will prepare a draft of the Will. The Will must be written in Spanish. If you do not speak Spanish fluently, it is recommended to bring a certified translator to ensure you fully understand the terms. Some notaries can accommodate this by creating a Will in both Spanish and an additional language, such as English, with the assistance of an external professional.
- 3.-Meet with the Notary: During your meeting with the notary, you will need to present your original passport and ID for the official signature.
- 4.- Registration of the Will: The notary will keep the original Will in their office and will register it with the Spanish Central Wills Registry, ensuring that the location of the last Will of the testator is known. You will receive a copy of the signed Will; the original Will will not be released by the notary until the testator has officially passed away.

What happens if you are not in Spain, or you are not able to visit the notary?

If you are outside of Spain and wish to create a Will that will be valid for assets located in Spain, you can certainly do so. However, it is crucial to ensure that the signed Will complies with Spanish legal requirements. There are two main options available:

a) Visit the Spanish Consulate or Embassy

The simplest way to sign a Will that is valid in Spain while abroad is through a Spanish Consulate or Embassy. Spanish consulates have the legal authority to act as notaries for both Spanish nationals and foreigners in relation to Spanish assets.

b) Visiting a foreign notary

If you are unable to visit a Spanish consulate, you can sign a Will with a notary in your country of residence. However, this Will must be legalised or bear an apostille under the Hague Convention to be valid in Spain, along with an official translation.

In both cases, the Will must be registered with the Spanish Central Wills Registry to ensure it is officially recorded, allowing the heirs to locate it upon the testator's death.

The primary complication with the two options mentioned above is that, aside from being significantly more expensive and time-consuming, if the Will is not submitted to the Spanish Central Wills Registry, it will not be considered official in Spain.

What happens if you are in Spain, but you cannot visit a Spanish notary?

If you are in Spain but unable to visit the office, it is possible to arrange for a Spanish notary to come to your home to conduct the official signing of the Will.

2. Process after the death of the person who made the Will.

If you are reading this section of the guide, it means it is time to sign an inheritance deed in Spain. First and foremost, please accept our heartfelt condolences.

Before you begin gathering the requested documents, we strongly recommend seeking professional advice. A qualified professional will guide you through the inheritance process, assist you in obtaining the necessary documents, and ensure that you follow the correct procedures. Additionally, a tax advisor can help you avoid mistakes that could delay the process or lead to financial penalties, particularly concerning the payment of inheritance taxes.

If an heir is unable to manage the inheritance process in person, they can grant a Power of Attorney (Poder Notarial) to someone they trust, such as a professional, to handle the entire process on their behalf. This can be arranged at any notary's office in Spain or even abroad through a Spanish consulate or an international notary. The Power of Attorney should include clear instructions outlining the tasks that the appointed professional is authorised to perform, such as signing the inheritance deed, obtaining necessary documents, closing bank accounts, and paying inheritance taxes, among others.

Before signing the inheritance deed, the following documents will need to be obtained:

Death certificate

The death certificate must be obtained from the Civil Registry (Registro Civil) in the area where the death occurred. If the death happened in a hospital, you can also contact the hospital for assistance. This document is essential for starting the inheritance process. If the death occurred outside of Spain, the document will need to be apostilled and notarised as well as officially translated into Spanish.

Last Will certificate

The Acta de Últimas Voluntades (Last Will Certificate) indicates whether the deceased had a valid Will at the time of their death and, if so, the notary where it is held. Therefore, it allows heirs to find out if there is a Will and obtain information on its location, which is essential for the inheritance process. The Acta de Últimas Voluntades is issued by the Spanish Ministry of Justice and can be requested at the local registry office or online, depending on the region. It is available approximately 15 days after the death.

Insurance certificate

Similar to the Last Will certificate, you can also request a certificate from the Ministry of Justice to confirm whether the deceased had life insurance in Spain.

Original Will

You will need to visit the notary who holds the original Will. The inheritance process cannot proceed without this document. Please note that the Will must be the most recent one recorded in Spain, as indicated in the Last Will certificate (Acta de últimas voluntades).

Other documents for assets to be inherited

It is also necessary to obtain any relevant documents to demonstrate that the assets being inherited belonged to the deceased, such as bank certificates, property registry notas simples, and other similar documents.

3. The inheritance process (dealing with the Spanish deed and related taxes)

Identify the Heirs

If a Spanish Will is in place, the heirs are those named within it. If any of the heirs are foreign nationals without a tax number in Spain, they will need to obtain a Spanish NIE (Número de Identificación de Extranjero). This identification number is necessary for managing the inheritance process, signing documents, and paying taxes in Spain.

A tax advisor or lawyer can assist non-resident heirs in obtaining their NIE, either directly through Spanish authorities or via the consulate in the heir's country of residence.

Signature of the Inheritance Deed

Once all the documents described above have been obtained and all the heirs possess their own NIEs, it is necessary to visit the notary to sign the Inheritance Deed (Escritura de Aceptación de Herencia). This formal legal document divides and assigns the deceased's assets to the heirs.

All heirs (or their representative with a Power of Attorney) must appear before the notary to sign the inheritance deed. With this document, the assets are transferred from the deceased's name to the heirs' names.

If property is involved, the inheritance deed must then be registered in the corresponding property registry, depending on the municipality where the property is located.

Inheritance tax

After the inheritance deed has been signed, it will be necessary to submit the inheritance tax declaration and pay any applicable taxes.

The inheritance tax varies depending on whether the inheritor is a tax resident of Spain or not and the specific region where the inheritance applies. In some regions, there may be no inheritance tax payable for close family members, particularly spouses and children. Therefore, it is advisable to organise the submission of this declaration with the help of a professional.

The deadline to pay the inheritance tax is six months from the date of death. While you can request an extension of an additional six months, this request must be made within five months of the date of death (this deadline may vary by autonomous regions in Spain).

What happens if the deceased passed away many years ago and nothing has been done?

In Spain, in order to sell any asset, it must first be in your name. Therefore, if the owner of Spanish assets has passed away and the inheritance deed has not been signed, the assets will remain in the deceased's name and cannot be transferred to a third party until they are officially transferred into your name.

The inheritance deed can be signed at any time, even years after the death. However, inheritance taxes may still apply, and if they do, fines will be imposed by the tax office for the late submission of the inheritance tax declaration.

Once again, it is advisable to seek professional assistance to ensure your inheritance matters are brought up to date.

Spence Clarke specialises in Spanish tax, accounts, law and labour services, mainly to foreigners in Spain and Spanish nationals with international interests. Our cross-border knowledge helps clients adapt to the different system with the minimum of doubt and disruption. If you have any questions about this guide or any other matter [contact us](#), with no obligation, to see how we can help you. The contents of this guide are for general information only and provided without any responsibility and must not be relied upon without taking formal and specific advice from a suitably qualified professional adviser.
