

My Lawyer in Spain

English Solicitors & Spanish Abogados

Guide to inheriting Spanish property

Step 1: find out whether there is a Spanish Will and who the beneficiaries are

- Check with the **public registry (Registro de Últimas Voluntades)** if the deceased had a **Spanish Will**. To do this you will need to have an **original death certificate** (legalised with the Stamp of the Apostle of the Hague and translated into Spanish)
- The registry will **issue a certificate** which **confirms the existence of a Will** and **the name of the public notary** before whom the deceased signed their last Spanish Will.
- Then, **contact the notary** where the last Will was signed to request a copy of the last Spanish Will signed by the deceased. (Obtaining an authorised copy of the Will usually takes several days especially if the Will was signed many years ago.) **more...**

- If the **registry confirms** that there is **no Will in Spain**, then it will be necessary to check if **a Will was signed outside of Spain** and whether that Will refers to the assets in Spain. If the Will refers to Spanish assets, then the Will **has to be accepted in Spain**.

- If there is **no other Will or reference to Spanish assets**, then the **deceased died without a Will**. The estate is **intestate** and it will be necessary to consider which law applies to the distribution of the estate and who inherits in accordance to such law.

Step 2: gathering information about Spanish property, bank account and taxes payable

- If the deceased owned a property in Spain it will be necessary to check the **land registry records to verify this ownership** and find out if there are any **mortgages or charges** on the property.
- In addition it is important to confirm if there are any **outstanding bills** such as the town hall rates (called IBI or Basuras).
- It will be important to ascertain the **property value** so you could either instruct a valuer or obtain the so called “**minimum tax value**” of the property which is the value as assessed by the local tax office.

more...

Step 2 - continued

- Having a value for the property at this early stage will allow you to calculate any estimated **inheritance tax** and the local capital gains tax known as **Plusvalia** which is payable upon inheriting a property in Spain. It is important to **be aware of the possible tax payable** which in some cases can be significant.
- When someone owns a property in Spain it is usual that this person had a **Spanish bank account** to pay utility bills, so it would be advisable to **gather any bank documents** the deceased held in relation to bank accounts in Spain.

Step 3: Obtaining beneficiaries POA & NIEs

- Once we have **verified who inherits** the Spanish assets according to the Will or intestacy rules, we will then apply for the **tax identification number** (so called **NIE** number) for the beneficiaries as it is compulsory to refer to this number in the inheritance deed. In some occasions when **an executor** is involved in the inheritance process, an NIE for the executor will also be required.
- The **NIE** is issued by the local police in Spain and once obtained, it has to be registered with the Spanish tax office.

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Step 3 - continued

- The lawyer instructed by the beneficiaries in Spain would normally **obtain the NIE using the power of attorney (POA)**. This is the document when the beneficiaries authorise a lawyer to act on their behalf in order to complete the probate process in Spain.
 - The POA is signed at a notary office either in Spain or abroad.
 - The lawyer will draft the POA and will liaise with the notary.
 - If the POA is signed out of Spain, it must be legalised in order to be valid here in Spain.

Step 4: Signing the Spanish deed of acceptance of inheritance

- Now that we know **who inherits the Spanish assets, the law that applies** and we have **a list of the assets in Spain** along with the **POA and NIE for the beneficiaries**, we are ready to proceed with the signing of the Spanish deed of acceptance of inheritance.
- However, before the deed is signed, it is necessary to prepare an **estimate of the costs that will be payable** once the Spanish deed of inheritance is signed.

more...

Step 4 - continued

- In essence the costs will comprise
 - Notary fees
 - Land registry fees
 - Inheritance tax
 - Plusvalia

- These costs will then be deposited with the lawyer in order to settle the costs, after the deed has been signed.

more...

Step 4 - continued

- The so called **Escritura de Aceptación y Adjudicación de Herencia** is the **key document** whereby the beneficiaries formally accept the Spanish estate and it **sets out the proportion that each beneficiary inherits and the value of the estate.**
- Therefore it is **the title deed** that proves the beneficiaries are now **the legal owners** of the Spanish assets.

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Step 4 - continued

- The inheritance deed must be **signed at the notary office**. The notary witnesses the signature and content of the deed. (This is why we say the deed is a “public document” as the notary is considered a public authority in Spain appointed by the Spanish government)
- Signing the deed implies that **the inheritance process will be formally declared** and public authorities such as the tax office in Spain will become aware of it.

more...

Step 4 - continued

- In practice **the lawyer will provide all the original documentation to the notary prior to the appointment with the notary for him to verify that all the legal requirements are met.**
- **The lawyer can have the inheritance deed signed on behalf of the beneficiaries as long as the lawyer has their POA.** It means that the beneficiaries do not need to attend personally the meeting with the notary public as a POA was granted.

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Step 4 - continued

- The inheritance deed will reflect the **beneficiaries details and the estate value** and based on this value the **inheritance taxes** will be settled.
- If a **property** exists we will normally use either:
 - the official valuation from a valuator
 - the market value as stated by a real estate agent
 - or the minimum tax value as assessed by the tax office.
- Whichever the value we use the **tax office is always entitled to challenge the value** if they consider it is low.
- If a bank account exists the bank certificate issued by the bank will reflect the account balance on the date of death.

Finally

- Once the deed has been signed:
 - ❑ it will be collected & notary fees paid
 - ❑ inheritance taxes settled and then sent to the Foreigner tax office in Madrid to be stamped
 - ❑ the deed can be sent to the local land registry where the property is registered, if the assets includes property, so the heirs can be registered as owners.

- If the assets include the bank accounts or shares, then the deed will be sent to these financial institutions so that the funds can be transferred to the heirs and the accounts closed or in the case of shares, these can be sold.

Call the 'My Lawyer in Spain' team to talk about your probate matter

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