

Spanish heritage and last will

In Spain, there is no probate court and there are no public authorities that start a probate process. The initiative lies with the heirs. When the deceased was resident in Spain, all assets, both inside and outside Spain, must be included in the probate process in Spain. A Spanish will saves the heirs many troubles.

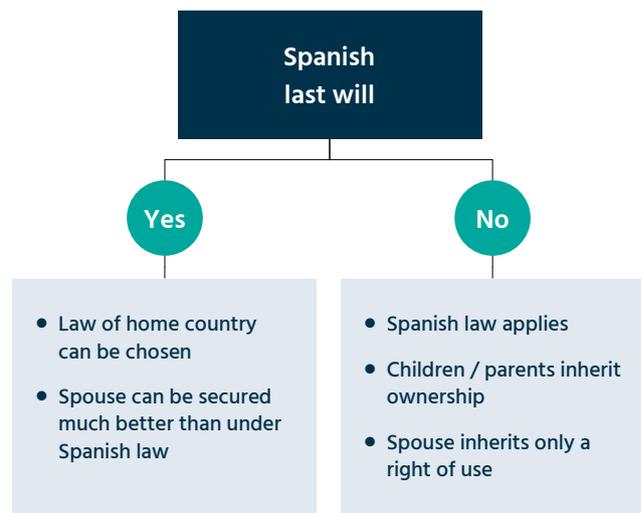
The probate process in Spain

Before the heirs gain access to Spanish assets, thereby gaining the opportunity to sell real estate in Spain, it is necessary for them to sign an inheritance title deed with a Spanish notary, containing a distribution of the estate between the heirs.



Does Spanish Inheritance Law apply?

Spain's international private law rules that the law of the testator's most recent domicile must be applied to distribute the estate.



However, a last will may stipulate that the law of the testator's nationality shall apply to the distribution of the estate.

*“Under Spanish law,
the spouse is not the legal heir...”*

For foreign nationals resident in Spain, this means that they have the option of choosing the law of their own country, as the law to be applied to the distribution of estate.

Can you leave the estate unaltered as the law of some countries allows?

However, it is only possible to apply foreign law in a probate process in Spain to the extent, that this is possible in a Spanish context and only as long as the result of the distribution of the estate does not conflict with essential principles of Spanish law.

“It is therefore not possible to register a foreign unaltered estate in the Land Register in Spain, as this figure does not exist in Spanish law”

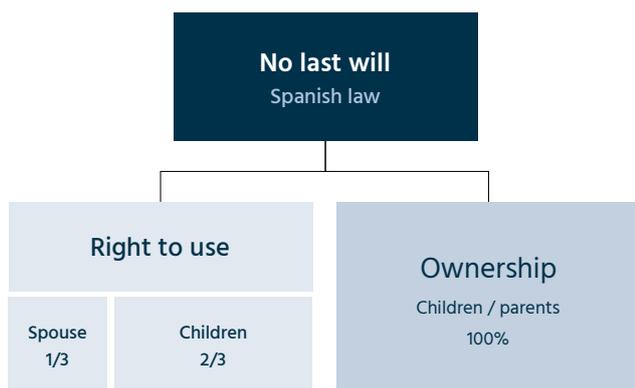
The heirs thus have to register an inheritance title deed in the Land Register to secure their ownership and to be able to sell or mortgage the property.

Who inherits under Spanish law?

Spain is divided into 17 different ‘Comunidades Autonomas’, all of which have a high degree of autonomy and several have local inheritance rules.

“A Spanish will can ensure that the distribution of the inheritance takes place according to the law of your home country”

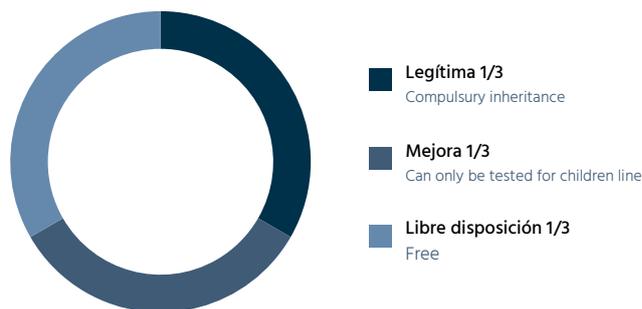
The following are the general Spanish rules of inheritance according to the Spanish Civil Code.



Only children / parental line are forced). The spouse is not a legal heir, but inherits a right of use (not a right of ownership).

How can you test under Spanish law?

Only 1/3 can be tested freely, and thus only this part



that can be tested for a spouse together with the right of use (usufructo) to 1/3 (mejora).

Foreign last will?

Although a foreign will is generally valid in Spain, special attention must be paid to the fact that not all foreign legal figures (eg unaltered estate) exist in Spanish law, just as dispositions may be valid under foreign law but invalid under Spanish. A foreign will can therefore be considered completely or partially invalid in Spain.

Why sign a Spanish will?

- It is ensured that the distribution of the estate takes place in accordance with your home country law, and doubts about interpretation are excluded.
- A Spanish will makes the probate process in Spain much easier for the heirs.

Special Spanish heritage issues

- No probate courts exists.
- The probate process does not start automatically.
- There is no independent legal person arising.
- Real estate can only be sold after an inheritance deed has been signed and registered.
- A last will can always be revoked.
- Unaltered estate does not exists in Spanish law.
- Deadline of 6 months for payment of Spanish inheritance tax.

Our qualified experience

Zafo Law has taught Danish lawyers on the law course ‘International Heritage’ arranged and offered by *Danske Advokater*.