

A Guide to Probate in Spain



What do to when someone passes away
who has assets in Spain

A practical guide for dealing with cross-border estates
between the UK and Spain

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What happens when someone dies with assets in Spain?

If you are about to receive an inheritance with assets in Spain whether the deceased owned property, bank accounts, stocks and shares, cars, etc. you can read this guide so that you know what to do and in which order.

WHAT HAPPENS WHEN SOMEONE DIES WITH ASSETS IN SPAIN?

To help you through this process, the guide below gives you an easy to read overview at a glance. This guide is arranged in chronological order considering the arrangements that are usually made when executing an inheritance in Spain.

DEATH IN THE UK

- Death Certificate issued by the Registrar
- Will Search in the UK
- Application for the Grant of Probate
- Who should you advise about the Death when there is a Spanish asset

ADMINISTRATION OF THE ESTATE IN SPAIN

- Asset Inventory worksheet
- Will Search in Spain
- Locate important documents
- Identification of the beneficiaries and executors (Power of Attorney)
- Application of the NIE (Tax Identification Number for Foreigners)

TAXES TO BE PAID IN SPAIN

- Inheritance Tax
- Plusvalia Tax

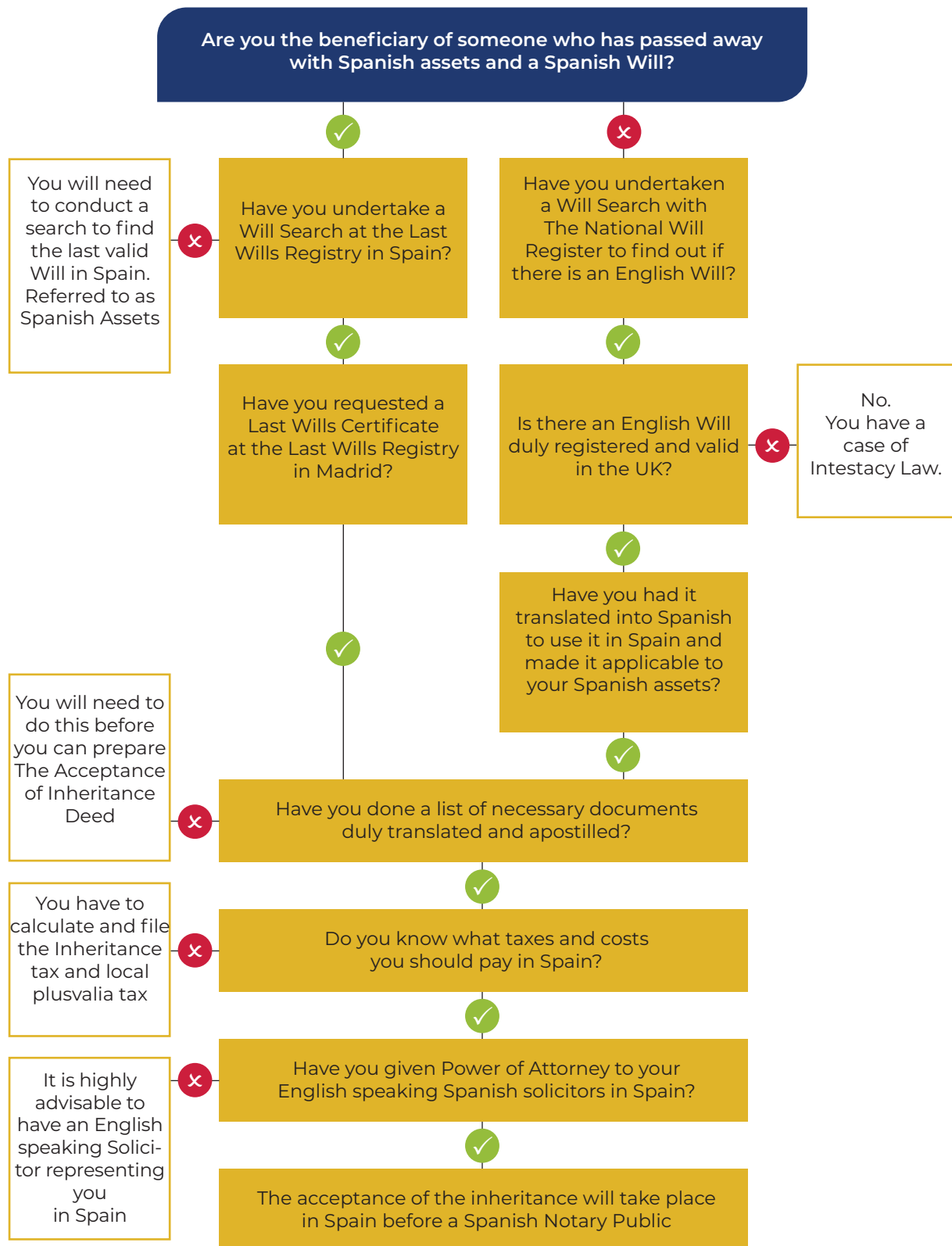
COMPLETION

- Signature of the Acceptance of the Inheritance Deed before the Notary Public in Spain and transfer of ownership

POST-COMPLETION

- Opening an account in Spain for the beneficiaries, change of utility bills and local taxes, change of Property Tax registration and writing and registering new Spanish Wills for the heirs.

Inheritance in Spain flowchart



List of assets in Spain

It is always helpful to complete the Asset Inventory worksheet- this helps to be clear on what are the assets to take into account when signing the Inheritance Acceptance Deed in Spain as all the assets must be mentioned.

The table below can act as a starting point (another copy of this table is included at the end of this document that you can print/pull off and use as a point of reference – see Appendix I)

PROPERTY
Property 1
<input type="checkbox"/> Sole owner <input type="checkbox"/> % of the tenancy
Address: _____
Registered owners: _____ _____
Title details: _____ _____
Mortgage (if any) being the mortgagee: _____
Occupied by (if anyone): _____ _____
Use given to the property: _____ _____
Attach copy of the following documents:
<input type="checkbox"/> Deed of Purchase <input type="checkbox"/> Last IBI receipt (Property receipt)

COMPANIES AND BUSINESS

Business 1

Address: _____

Registered company: _____

Shares: _____%

Incorporation Deed attached? YES NO

Insurance? YES _____

NO

Attach a copy of the following documents

Deed of Incorporation Copy of the Insurance of the Company

ASSETS WITH FINANCIAL INSTITUTIONS

INVESTMENTS

Name of the Institution: _____

Account number: _____

Total amount: _____

Brief description: _____

Copy documentation attached: YES NO

SHARES

Name of the Institution: _____

Account number: _____

Total amount: _____

Quoted? YES NO

Brief description: _____

Copy documentation attached: YES NO

STOCKS

OTHER ASSETS

CONTENTS

Furniture: Inventory Value:

_____	_____
_____	_____
_____	_____

Paintings: Inventory: Value:

_____	_____
_____	_____
_____	_____

Antiques: Inventory: Value:

_____	_____
_____	_____
_____	_____

Jewellery: Inventory: Value:

_____	_____
_____	_____
_____	_____

VEHICLES

Car 1: Model Registration Number:

_____	_____
-------	-------

Technical Sheet Attached: YES NO

Car 2: Model Registration Number:

_____	_____
-------	-------

Technical Sheet Attached: YES NO

Motorcycle: Model Registration Number:

_____	_____
-------	-------

Technical Sheet Attached: YES NO

Boat: Model Registration Number:

_____	_____
-------	-------

Technical Sheet Attached: YES NO

CREDITS

Debtor's name _____

Amount (in numbers) _____

Debtor's name _____

Amount (in numbers) _____

Debtor's name _____

Amount (in numbers) _____

Copy of the documentation attached: YES NO

MORTGAGES

Mortgage 1: Mortgagee: _____ Amount: _____

Copy of the Title Deed attached: YES NO

Copy of the mortgage life insurance: YES NO

Mortgage 2: Mortgagee: _____ Amount: _____

Copy of the Title Deed attached: YES NO

Copy of the mortgage life insurance: YES NO

PERSONAL DEBTS

Debt 1: Credit: _____ Amount: _____

Copy documentation attached: YES NO

Debt 2: Credit: _____ Amount: _____

Copy documentation attached: YES NO

Locate important documents

You should already have located the Death Certificate. Other paperwork, examples listed below, will also be helpful to execute the Inheritance in Spain.

- Death Certificate
- Last Will and Testament in the UK
- Last Will and Testament in Spain
- Passport and NIE Number of the Deceased
- Passport of the Executor/s
- Passport of the Beneficiary/ies
- Spanish Property Deeds
- Grant of Probate when available
- NIE Number (Tax Identification Number for Foreigners)

Find the Will

WILL SEARCH IN THE UK - ENGLISH WILL

The next thing on the list is to find out if the deceased left a valid Will in the UK.

Conducting a Will Search shows that reasonable steps have been taken to ascertain if a Will, or later Will than one already identified, exists, before distributing an estate, therefore reducing the risks involved in administering/distributing an estate for all involved.

National searches are offered via The National Will Register, allowing a quick, easy and thorough search to take place. A Certainty Will Search checks if a Will has been registered on The National Will Register, and for Wills that have not been registered by making contact with solicitors and Will writers in the area(s) where the Will was most likely to have been made.

WILL SEARCH IN SPAIN- SPANISH WILL

Also, it is necessary to find out if the deceased left a Will in Spain. This Will in Spain is usually referred to Spanish assets only, and can co-exist with the English Will.

ProbateinSpain by *Temis and Co* will undertake a search at the Spanish National Registry and will confirm the existence of the Spanish Will. If there is a Spanish Will and also a Will made in the UK referred to all assets worldwide, the Will that is dated the latest will apply to the inheritance in Spain.

NO WILL

If you do not have a Will expressly mentioning the applicable law to the Inheritance - chosen by the Testator/Testatrix - according to the European rules the applicable law will be the law of the last habitual residence of the deceased. Even if the United Kingdom steps out of the European Union after Brexit, this rule will apply as long as a British national owns a property in Spain, as it is applicable *Erga Omnes*. This means that if someone owns a property in Spain and passes away by having their last habitual residence in Mallorca, the assets will be distributed based on the rules of the Spanish Intestacy Law: the children inherit the estate in equal shares and the spouse enjoys the life tenancy of 1/3 of such estate.

Therefore, for British nationals who own property in Spain it is highly advisable to make a Will referred only to Spanish assets mentioning that the applicable law will be their national law, which is English Law. The advantage of the English Law in comparison to Spanish Law is that English Law gives free-disposal of the assets and does not contemplate compulsory heirs, as opposed to Spanish Law.

The probate journey

WHAT IS INVOLVED?

Dealing with a loved one's estate can be a difficult task as the process in Spain is different to the United Kingdom. Therefore, you need the assistance of a Spanish solicitor who can help you make things easier.

Have you thought about:

- Closing bank accounts and transferring the funds into the beneficiaries' accounts
- Creating a Power of Attorney for someone to represent your interests in Spain
- Applying for your NIE number (Tax Identification Number for Foreigners)
- Dealing with shares and investments in Spain
- Transferring the ownership of the property in Spain
- Selling the property

TAXES

There are three main stages in the process:

1) Collecting information about all the assets and debts of the deceased

It is important to have the list of assets which must be included in the inventory when accepting the Inheritance.

2) Filing the taxes and other costs

Inheritance Tax (to be paid in Spain)

The beneficiaries will pay the Inheritance Tax in Spain when they inherit assets located in Spain and they have a period of 6 months from the date of death. If the tax is not paid, surcharge interests and a fine shall be applied. The Inheritance Tax rate paid by British nationals is the same than the Inheritance Tax rate paid by the residents in Spain. The Inheritance Tax is regulated by the Autonomous Community where the property is located and any reductions and bonuses applicable to the residents of that particular Autonomous Community shall also be applicable to British nationals.

Plusvalía Tax:

Apart from the Inheritance Tax, the heirs shall pay a local Tax called "Plusvalía Tax" based on the increase of value of the land from the day the deceased acquired the property up to the date of their death.

This tax is filed before the town hall of the city where the property is located.

In order to file the taxes, the Executors and the Beneficiaries will need to apply for the NIE number (Tax Identification Number for Foreigners). As the NIE number is usually requested in Spain, the Executors and the Beneficiaries will sign a bilingual Power of Attorney before a Notary in the UK, so they can authorize their counsel in Spain to deal with their NIE.

Other costs:

Other costs involved when claiming the inheritance are the following:

- Notary fees: approx. 1.000 euros - 1.500 euros
- Registry fees: approx. 800 euros
- Bilingual Power of Attorney: approx. 250 euros
- Translation and Legalisation of Documents: approx. 300 euros
- Legal fees: Probate in Spain by *Temis & Co* will offer a fixed fee depending on the value of the estate and number of Beneficiaries and Executors involved.

3) Distributing the Assets to the Beneficiaries

In order to Transfer the ownership into the Beneficiary's name the following steps will have to be undertaken:

- Preparation of the Deed of Acceptance of the Inheritance
- Usually the beneficiary/ies will require the services of a Spanish Solicitor who will sign the Inheritance Deed via Power of Attorney on behalf of the Beneficiary/Executor. The Deed is signed before a Notary Public in Spain, who gives faith of the Acceptance of the Inheritance and that the title of ownership of any assets being part of the estate is transferred to the heirs.
- Registering the assets into the Beneficiary's name at the Spanish Land Registry.

POST-COMPLETION

Once completion has taken place, there are some necessary post-completion services that the new owners of the inherited property will need:

- It will be necessary to change the existing utility contracts into the name of the Beneficiary/ies.
- The change of the ownership of the IBI receipt (Local Property Tax) will have to be communicated to the Town Hall where the property is located.
- If the property is part of a Community of Owners, they will have to be aware of the change of ownership. Therefore, the new owner has to make a formal communication to the Community of Owners and change the direct debit of the payment of the Community fees.
- If they want to maintain the property, they will have to pay for the usual expenses such of utility bills, council tax, annual taxes, insurance, etc. For that, they will have to open a bank account at a Spanish bank.
- If the beneficiaries want to sell the property, they will need to be assisted by a professional in Spain who can deal with the marketing of the property and also with the legalities involved with the sale.
- Making a Spanish Will and registering it is strongly advisable for anyone who inherits a property in Spain. Make sure once you have dealt with the pain of dealing with the deceased's affairs you should consider to have a valid Will duly registered in Spain.

Appendix I - List of assets in Spain

It is always helpful to complete the Asset Inventory worksheet - this helps to be clear on what are the assets to take into account when signing the Inheritance Acceptance Deed in Spain as all the assets must be mentioned.

PROPERTY
Property 1
<input type="checkbox"/> Sole owner <input type="checkbox"/> % of the tenancy
Address: _____
Registered owners: _____ _____
Title details: _____ _____
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Brief description: _____

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SHARES

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Account number: _____

Total amount: _____

Quoted? YES NO

Brief description: _____

Copy documentation attached: YES NO

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OTHER ASSETS

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Paintings: Inventory: Value:

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Technical Sheet Attached: [] YES [] NO

Motorcycle: Model Registration Number:

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Boat: Model Registration Number:

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CREDITS

Debtor's name _____

Amount (in numbers) _____

Debtor's name _____

Amount (in numbers) _____

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Amount (in numbers) _____

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Mortgage 1: Mortgagee: _____ Amount: _____

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PERSONAL DEBTS

Debt 1: Credit: _____ Amount: _____

Copy documentation attached: YES NO

Debt 2: Credit: _____ Amount: _____

Copy documentation attached: YES NO

Appendix II - Heir's instruction sheet

At ProbateInSpain by *Temis & Co* we can help the heirs deal with an Estate in Spain.

This is the Instruction sheet you should keep in a safe place for your Beneficiaries.

If you are one of the Beneficiaries of an Estate with Spanish Assets, please follow the instructions below:

- Search if there is a Spanish Will in place. If you can't find it, at ProbateInSpain by *Temis & Co* we can get an authentic copy for you.
- Gather the following documents:
 - Original Death Certificate
 - Grant of Probate
 - Spanish Will or English Will
- Calculate the Inheritance Tax compulsory by the heirs
- Calculate the Plusvalía Tax (local tax levied by the Town Hall)
- Sign the acceptance of the inheritance before the Notary Public in Spain
- Pay the taxes (points 3 and 4)
- Register the property into your name at the Spanish Land Registry
- Access to your accounts at the bank
- Change the name of your car and insurance
- Check if the deceased had an Inventory of Assets in Spain, under the ProbateInSpain by *Temis & Co* Custody of Documents Service.

Appendix III - Will questionnaire



Initial Information required for the drawing up of a Spanish Will

Testator's personal information:

Full Legal Name (First and Middle Name(s) and Surname(s)):

Maiden name: _____

Nationality: _____

Marital status: _____

Profession: _____

Passport number: _____

Issue and expiry dates of Passport: _____

Place of issue of passport: _____

Date and place of birth: _____

NIE (Spanish foreign tax number, if obtained): _____

Current address in country of residence: _____

Information regarding the Testator's family:

Father's full legal name: _____

Is he deceased or alive? _____

Mother's full legal name: _____

Is she deceased or alive? _____

Spouse's full legal name: _____

Spouse's maiden name: _____

Is he/she deceased or alive? _____

Names and birth dates of any children:

Previous spouse(s), if any (names, deceased or divorced?): _____

Names and birth dates of any intended beneficiaries (life partners, friends, other family members, or institutions (schools or universities), or charitable organisations):

Testamentary disposition in respect of assets in Spain:

Name and address of heir(s):

Personal Data Protection and Confidentiality:

In accordance with the Organic Law on the Protection of Personal Information (*“La Ley Organica de Proteccion de datos de character persona – LOPD”*), Temis & Co informs the Client of the existence of an automated file for the storage and processing of personal information in order to enable the management of the relationship with the Clients. All the personal and confidential information you provide to Temis & Co as a Client is used solely to provide the information and/or services requested. By signing this offer, the Client expressly consents to the automatic storage and processing of his/her personal information. The information will not be transmitted to, nor shared with, third parties. The Client can exercise their right of access, rectification, deletion and opposition to the processing of their personal information in accordance with the terms and conditions specified in the LOPD. For the Client’s convenience, the Client can also exercise these aforementioned rights by sending an e-mail to: info@temislawyer.com

The information contained in this guide is meant for information purposes only and you should seek your own legal or professional advice where applicable.

This guide was created by Roser Coll, Partner at ProbateInSpain by *Temis & Co.*

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