Testate succession of British citizens 2021

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English Succession Law differs substantially from Spanish succession regulations, which may become applicable to wills made by British citizens resident in Spain. It is therefore important to clear up the main doubts that they have with respect to drawing up their wills, and also the legal consequences that could arise.

This Guide aims to provide answers to the questions that may arise during this process and has been written with the support of Torreveja Council and and the association Help Vega Baja in Alicante.

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Who is this guide for?

- This guide is for British nationals who reside in Spain or are owners of property in Spain.

What is the purpose of this basic guide?

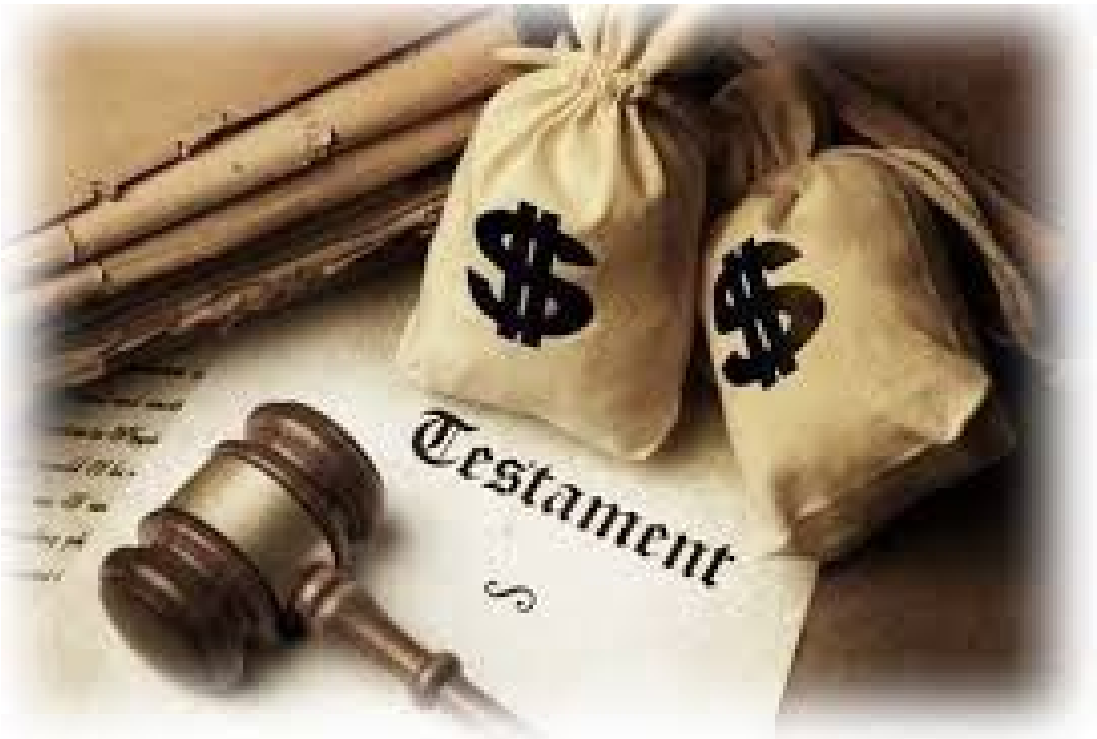
- This guide aims to clear up any questions regarding testate succession of British citizens in Spain. It also provides some steps and advice to avoid expensive legal problems which involve lengthy procedures.

If you have assets in the United Kingdom and Spain, what should you do?

- Some people include the assets they have in Spain in their English will. This is legally possible, but this English will must be executed in Spain after the legalization process in the United Kingdom. The drawbacks for this situation are that it is a lengthy and expensive procedure.
- Drawing up separate wills is the most recommended action: one in the United Kingdom for all the assets you own in that country; and another will in Spain for all the assets that you have in this country, and in addition you may choose English Law as the the applicable succession Law.

What happens if you make a will in the United Kingdom for your assets in Spain, where you reside? Are they compatible?

- **Yes,** they are compatible. Spanish Law recognizes wills drawn up abroad if they refer to property and assets in Spain. However, for these wills to be enforceable in Spain, they must be translated and legalized, which is more expensive than making a will in Spain for the assets you have here.
- If you have made a will in the United Kingdom, a *Grant of Probate* will be required so that the *executor* or *administrato*r can dispose of assets in Spain. In addition, according to Spanish Laws, the period for completing the succession procedure is 6 months from the date of death. However, it could take longer than 6 months for *Grant of Probate* to be issued, which could therefore lead to some type of sanction.



Is the European Succession Regulation applicable to testate succession of British citizens in Spain?

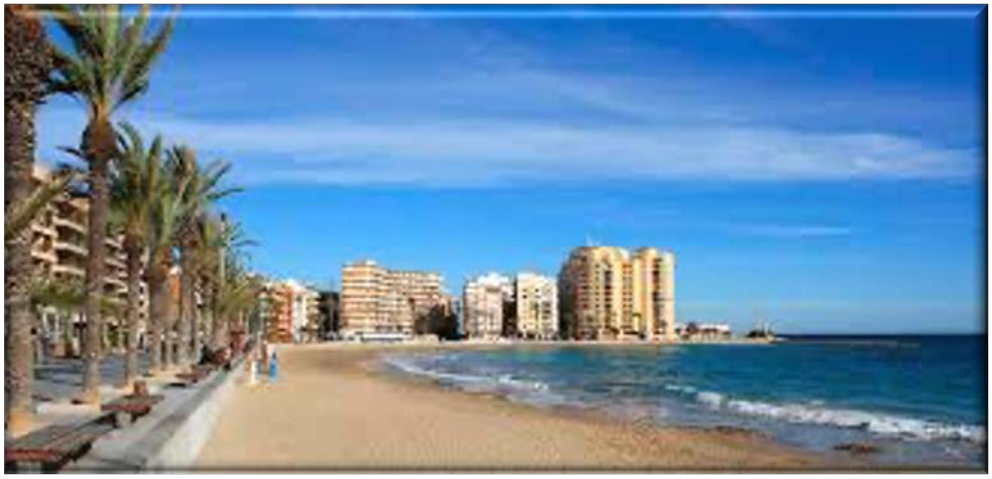
The European Succession Regulation 650/2012, 4th July 2012, applies to all foreign people whose habitual residence is in Spain and who pass away on or after 17th August 2015 (articles 23 and 83). To be exact, it will apply to:

- **Foreigners whose habitual residence is in Spain**.

It applies to Spanish wills drawn up prior to 17th August 2015 or those which do not comply with the terms of Regulation 650/2012. That is to say, the will does not state that succession should be subject to the national law of the deceased.

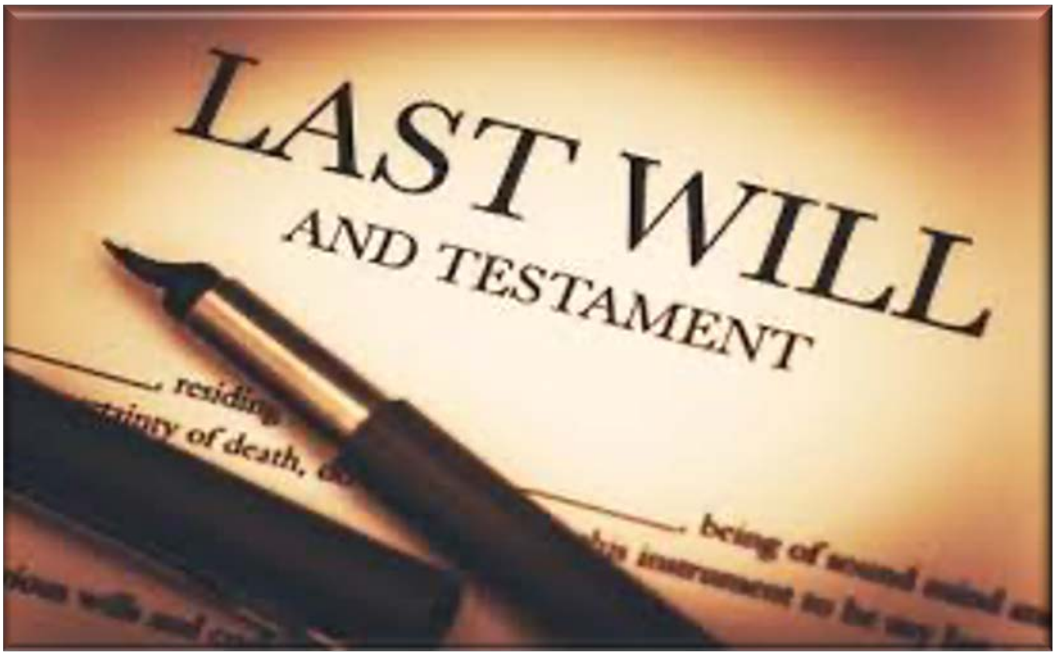
If you are a resident in Spain and have made a will which is dated prior to 17/08/2015 and it has been drawn up according to the Law of your nationality, but the Law to be applied to succession is not explicitly reflected as being English Law, then it is advisable to make a new Spanish will that complies with this regulation.

- **Non-resident foreigners** who have made a Spanish will and plan to become residents in Spain some time in the future. That is to say, a British family who have purchased an off-plan property in Spain and plan to sell up in the United Kingdom and move to Spain in the coming years.



Is a will valid if it is privately drawn up by a British citizen in Spain, the whole document being written mechanically - by typewriter or printer – and signed by the testator and any two witnesses?

According to English Law, this type of will does formally meet de necessary requirements to be valid, and in accordance with the Hague Convention signed by Spain, it is also valid in Spain.



What happens if no will is made for assets in Spain, whether you reside in our country or not?

If no will is drawn up in Spain with respect to assets here and the deceased's habitual residence was in Spain, Spanish Law will be applied in accordance with the applicable European Succession Regulation. Therefore, it will be necessary to take into account the legal concept of legitime, which defines the portion of the property to be bequeathed to the heirs, called "forced heirs" or legal inheritors. They are the descendants of the deceased, or in their absence, the ascendants, and if there are neither descendants nor ascendants, then the heir is the widow or widower.

What are the requirements for a will privately drawn up in Spain to be executable and to have full effect in Spain?

The necessary requirements are the same as those for any English will. That is to say, "Grant of Probate" must be issued by the corresponding English legal entity, since without this document the will cannot be effective and it will not have sufficient legal title for the Deed of acceptance and vesting of inheritance.

What happens to wills drawn up by British citizens with respect to assets in Spain before the European Succession Regulation 650/2012 came into force?

- According to the European Succession Regulation, wills drawn up prior to the application of this law are valid. It is understood that if the deceased disposed of their assets according to the Law of their nationality, then an implicit choice of Law was made, even though it was not explicitly stated that English Law was to be applied.

Is it advisable for British residents to draw up a will in Spain?

Yes, it is highly advisable to draw up a will if assets are to be disposed of according to the deceased's wishes and in accordance with English Law, since these are the regulations the deceased is most familiar with, and it is also permitted by the European Succession Regulation.

What is the procedure for drawing up a will before a Notary in Spain?

It is a very quick procedure. Unlike English wills, the will must be signed before a Notary, and no witnesses are required. It is drawn up in two columns, one in Spanish and the other in English, which is approved by an official translator. The Notary will keep one copy, give another copy of the signed will to the testator, and also submit it to the Registry of Last wills and Testaments.

What requirements must be met in order to draw up a will in Spain?

Spanish Succession Laws regulate the requirements to make a valid will:

- The will should certify your identity and ability to make a will.
- You should be over 14 years old, except for holographic wills, where the limit is 18 years old.
- You cannot delegate another person to draw up a will on your behalf.
- You cannot draw up a joint will.

Which Notary can you go to in order to draw up a will?

As a general rule, you can choose to draw up your will before any Notary you want. However, there are some exceptions as in the case where a Notary has to leave their office. For example, if they have to go to a hospital so that a terminally ill patient can make their will, a Notary within the same area should be chosen.

What is the procedure for drawing up a will before a Notary in Spain?

According to the Voluntary Jurisdiction Law, a competent Notary will be from the place of the testator's last habitual residence.

What types of will are commonly drawn up in Spain?

1. Closed will.

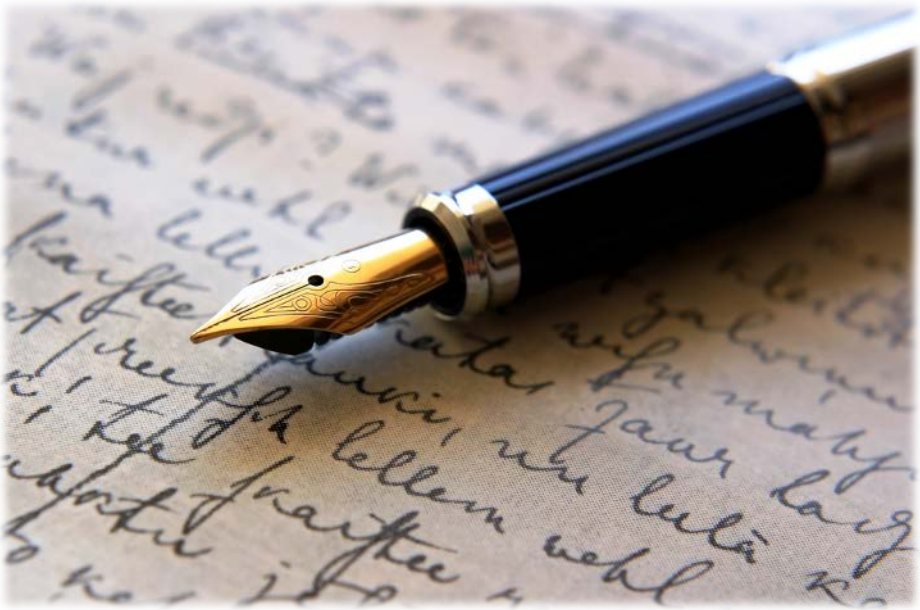
A closed will is drawn up by the testator, whose last will and testament is sealed in an envelope, preventing its contents from being removed unless the seal is broken. It is presented to a Notary who will execute a record of its registration. The testator can also take it with them or designate a third person to be responsible for its safekeeping. It is necessary for the document to be typed or otherwise written in the testator's own handwriting, and it must be signed by them. If it cannot be written or signed by the testator, then it should indicate the reason why another person has written the will in the testator's name.

2. Open will.

Once the will has been written, it must be mandatorily presented to a notary. Two witnesses must be present if the testator does not know how to read or, due to any circumstance, cannot sign it. If their is a risk of death or contagion, this type of will can be made without the presence of a notary, but there must be three or five witnesses. However, in this case, unless the testator has already passed away, it will only be valid for two months from when it was signed.

3. Holographic will.

This will can only be made by the testator in their own handwriting. It must also include the date on which it was drawn up and their signature. Although it is signed by them, it will not be valid if it has not been written in their own hand. In this case, the heirs have a maximum of 5 years, counting from the the time of death, to present it before the judge of First Instance corresponding to the testator's place of residence. However, if the testator has delegated a specific person, they are obliged to inform the authorities within 10 days after receiving the news of the death.



What are the costs involved for drawing up a will before a Spanish Notary?

Given the high importance and legal complications that can occasionally arise when drawing up a will, it is not an expensive procedure. Regardless of how much the testator's assets are worth, the fees for drawing up a will in Spain are very reasonable.

What happens if you lose your copy of a will drawn up in Spain?

Spanish wills are registered in the Central Registry of Last Wills and Testaments in Madrid. The original will is safely kept in the installations of the notary who authorized it, and the signee receives an official copy of it. In most cases, it is an officially registered document, so it is not important if the official copy of the will is mislaid.

Can a will that has already been drawn up be modified or revoked?

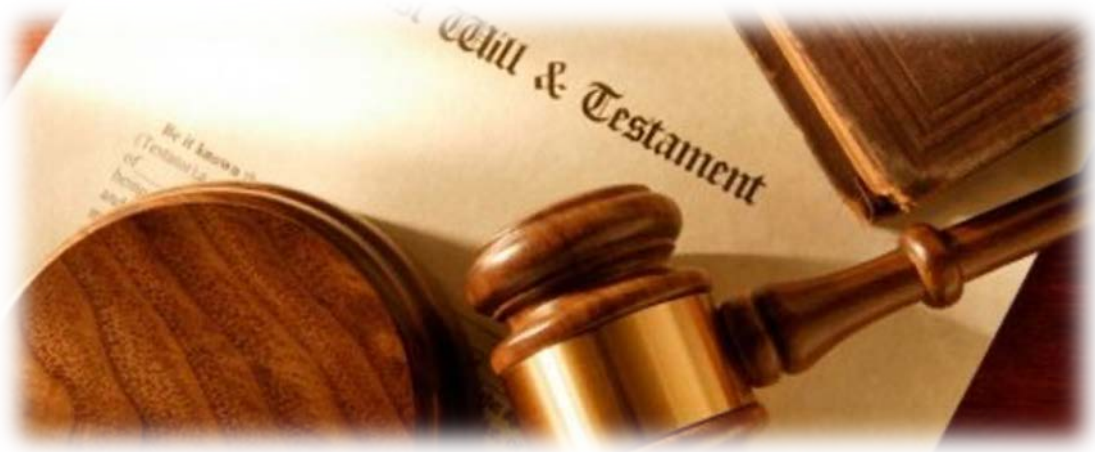
Yes, you can make and revoke as many wills as you want in Spain. The signing of a new will automatically revokes the previous wills that have been made with respect to the same assets.

How is it determined that the last will and testament drawn up is the valid one?

Wills drawn up before a public Notary in Spain are registered in the Central Registry of Last Wills and Testaments in Madrid. After the death of the testator, a certificate from this registry is requested and the last will and testament registered there is considered valid.

If a will is not drawn up and no action is taken by the heirs after a person's death, what happens to the assets in Spain?

If an inheritance is not claimed, there are no legal heirs or the inheritance is rejected by all the beneficiaries, the inheritance goes to the Spanish State. The extinctive prescription period established under Spanish Laws to exercise legal action to claim an inheritance is thirty years, regardless of the type of assets included in the inheritance. Once this period ends, if the inheritance is not claimed by any beneficiary, the assets become the property of the Spanish state.



What documents are required if an English will has been drawn up and you want to execute the inheritance?

A competent notary from the United Kingdom should issue a Statement of Truth and a legal certificate which states who the heirs are in accordance with the provisions in the will drawn up by the testator. You will also need a certificate of validity of the British Law of Succession.

What documents are required to execute an inheritance in Spain with respect to a will drawn up in Spain?

The **following documents** must be obtained:

1.- **Death certificate**, which is obtained from the Civil Registry corresponding to the place of death or residence.

2.- **Registry certificate of last will and testament and certificate of life insurances:** These certificates will state whether the deceased made a will in Spain or not, and whether the deceased had taken out any life insurance. A certified copy of the deceased's last will and testament must be requested.

Can you choose the Law that will be applied to succession; that is to say, *proffessio iuris*?

Yes, as a general rule, the Law of the country of the last habitual residence is applied. However, if you opt for the Law of your country of nationality to be applied (English Law) when planning and drawing up your will, this choice or *proffessio iuris* is valid and is permitted by the European Succession Regulation

How do you choose the law that will be applied to succession (*proffesio iuris*)?

In order to explicitly choose which Law, this can be done at the time of drawing up the will, or in a separate declaration; for example, by a notarized document. However, the choice of law can also be made implicitly if the assets in Spain are disposed of in accordance with British Law at the time of drawing up the will.

What happens if the Law to be applied to succession is not chosen at the time of drawing up the will and you reside in Spain?

If the Law to be applied to succession is not chosen, the Law of habitual residence is applicable in compliance with the European Succession Regulation. Therefore, the Spanish Succession Law will be applied, and as Spanish law recognizes the legitime, which defines the portion of the estate to be bequeathed to the forced or legitimate heirs, they will have a preferential right to the inheritance.

Can limits be applied to the Law chosen for succession?

Yes, the Spanish authorities that execute succession can refuse to apply certain provisions in English Law if they are contrary to the essential laws (public order) of Spain. For example, if assets are left to an animal or an object in the will, Spanish authorities can refuse to execute it.

If a will is drawn up and Spanish Law is applied to succession, who is responsible for executing the inheritance?

As Spanish Law is applied, the execution of the inheritance falls to the heirs, who can either accept or reject the inheritance. However, if the heirs do not reach an agreement about the administration of the inheritance, their disputes can be resolved before a Spanish tribunal.

Is it necessary to designate an *executor* when a will is drawn up in Spain?

No, it is not necessary to designate an *executor* (albacea) to administer a Spanish will, but you can do so if desired. Normally in Spain, a Notary executes the will although another person can also be designated to do this, such as a Lawyer, but this would be more expensive.

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Does the United Kingdom's exit from the European Union in any way affect succession of British nationals resident in Spain?

BREXIT does not have any effect on successions of British citizens in the framework of the member States of the European Union. Since the European Succession Regulation came into force, the UK is treated as a third state regarding its application. This regulation is mandatory for the Spanish authorities responsible for dealing with international succession, regardless of whether the Succession Law to be applied is that of a third state.

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