

This factsheet was prepared in cooperation with the Council of the Notariats of the EU (CNUE).

1 How is the disposition of property upon death (will, joint will, agreement on succession) drawn up?

Spain has seven different legal systems as far as inheritance law is concerned. These are directly applicable to non-Spanish residents in each territory with its own legislation. For Spanish nationals, the criterion of regional citizenship must be applied (link with each territorial jurisdiction under Spanish rules of law) in accordance with Article 36 of Regulation (EU) No 650/2012 of 4 July 2012.

As far as wills are concerned, a distinction must be made between their regulation under common civil law, as laid down by the Civil Code of 1889 and amended several times, especially since the publication of the Spanish Constitution of 1978, and their regulation under the local or special laws (*derechos forales o especiales*) of those autonomous communities with jurisdiction in civil law matters (Galicia, the Basque Country, Navarre, Aragon, Catalonia and the Balearic Islands).

Under common civil law, a will is the title of succession given that, as a general rule, a succession agreement or joint will is not accepted. A will may be:

- open, i.e. it is drawn up before a notary, who drafts it and adds it to his/her notarial records. This is the usual way of making a will;
- closed, i.e. it is drawn up before a notary without the notary being aware of its contents. This form is no longer in use;
- holographic, i.e. it is handwritten, signed and dated by the testator. This form is not common.

You can check Spain's common civil law on the Official State Gazette (*Boletín Oficial del Estado*) website (

<http://www.boe.es/buscar/pdf/1889/BOE-A-1889-4763-consolidado.pdf>). You can find translations of this text in English and French on:

<http://www.mjusticia.gob.es/cs/Satellite/es/1288774502225/ListaPublicaciones.html>

Local or special laws have their own rules on wills in each of the territorial jurisdictions in which they apply, with different and specific types recognised in each of them. Some accept joint wills and succession agreements.

You can find the text of each specific regulation for local or special laws on: <http://www.boe.es/legislacion/codigos/codigo.php?id=48&modo=1¬a=0&tab=2>

2 Should the disposition be registered and if yes, how?

Wills made before a notary must be registered by the notary in the General Register of Wills (*Registro General de Actos de Última Voluntad*) kept by the Ministry of Justice. If there is a will, this Register will indicate the date of the most recent will, any previous wills and the official notarial records in which said will was listed. Notarial professional bodies (*Colegios Notariales*) can provide up-to-date information on the notary or the archive where the will may be located if the authorising notary is no longer in practise (<http://www.notariado.org/>).

This Register is not publicly accessible. It can only be accessed by persons who can prove that they have a legitimate interest in the succession once the testator has passed away, and, during his or her lifetime, by the testator or his or her special representative, or through a court order in case of incapacity.

3 Are there restrictions on the freedom to dispose of property upon death (e.g. reserved share)?

Spanish common law reserves a portion of the estate, or rather the assets it entails, for certain relatives in the form of a reserved share after including the value of the voluntary dispositions made by the testator, including *inter vivos*, and after deducting debts. According to the Civil Code, the 'reserved share is the portion of the estate that the testator cannot distribute as this portion is reserved by law to certain heirs, referred to as "legal heirs".'

Legal heirs are:

Children and descendants, with respect to their parents and ascendants.

In the absence of the above, parents and ascendants, with respect to their children and descendants.

The widow or widower in the manner provided for by law.

The reserved share of children and descendants consists of two thirds of the estate of the father and mother. However, they may distribute one of the two thirds forming the reserved share in order to improve the inheritance of their children or descendants. The remaining third will be freely distributable. It is characterised by conferring a right over the entire estate since, with a few exceptions, it is in general *pars bonorum*.

The reserved share of the ascendants consists of half the estate of the father and mother, unless the spouse also holds a share, in which case the reserved share consists of one third.

The reserved share allocated to spouses not legally separated consists of the usufruct of two thirds of the assets of the estate in the absence of ascendants and descendants. If there are descendants, it consists of the usufruct of one of the two thirds that correspond to the descendants. If there are only ascendants, it consists of the usufruct of half, which the heirs may settle in cash.

The local or special laws contain various rules laying down specific provisions relating to reserved shares. Each of these rules must be examined to determine the specific aspects regulated in each of these territorial jurisdictions, which range from the *pars bonorum* reserved share to *pars valorum* involving a right to a share of the value of the property, which is paid in cash and is a simple credit right, for example in Catalonia, and even a symbolic reserved share for example in Navarre, which simply requires ritual wording in the will of the testator required to pay.

4 In the absence of a disposition of property upon death, who inherits and how much?

We should once again bear in mind that Spain has seven legal systems for inheritance matters. In common civil law, if there are no heirs entitled under a will the law distributes the estate in the following order of priority: 1. descendants; 2. ascendants (in both cases with the spouse holding a right of usufruct over one third or one half of the estate, respectively); 3. spouses not legally separated; 4. fourth-degree relatives (first cousins); 5. the State.

The local laws contain specific provisions on this matter. In addition to the possibility of inheritance by relatives, the local laws recognise the possibility of inheritance by the autonomous community of residence of the testator, and even by a specific institution, in the form and under the terms laid down in the rules governing this matter.

5 What type of authority is competent:

5.1 in matters of succession?

In the absence of disposition of property upon death, notaries have the authority to determine the parties entitled to inherit the estate by law (declaration of heirs).

If any of the parties concerned dispute the status of the heirs, the assets comprising the inheritance or the division of the inheritance, the dispute will be settled by the courts in the corresponding legal proceedings.

5.2 to receive a declaration of waiver or acceptance of the succession?

As a general rule, a declaration of waiver or acceptance of the succession is made before a notary. Although explicit acceptance can also be given in a private document, where an award of property is involved, or for evidentiary purposes, a public notarial document is required. This is without prejudice to the possible intervention of a Spanish Consul or diplomatic official authorised to perform notarial functions.

Acceptance may also be implicit (given through instruments that necessarily imply a willingness to accept, or that only persons with the status of heir are entitled to enact).

Any person who can establish that he/she has interest in the heir waiving or accepting the succession may instruct the notary to inform the heir that he/she has 30 calendar days to accept or waive the succession.

If the heir waives succession to the detriment of his/her creditors, the creditors may petition the judge to authorise them to accept it on behalf of the heir in order to cover the amount owed.

Partial or conditional acceptance is not permitted. The heir may, however, accept the succession and not the legacy, or *vice versa*.

5.3 to receive a declaration of waiver or acceptance of the legacy?

The same authority as for the succession, as described in the section above.

However, as an exception to the prohibition on partial acceptance, if there are various legacies not requiring payment of consideration in order to receive them (or if all of the legacies require such consideration), a legatee may accept or waive them individually. What a legatee is not permitted to do is waive those requiring consideration and accept those not requiring consideration.

5.4 to receive a declaration of waiver and acceptance of a reserved share?

The reserved share itself cannot be waived or accepted; rather, it is received by way of bequest or grant of probate, except in the case of legal action to determine the payment of an amount or property to be charged to the estate.

The Civil Code permits a legatee to waive the succession and accept the improvement of the inheritance (which is one of the two thirds of the reserved share of the descendants).

6 Short description of the procedure to settle a succession under national law, including the winding-up of the estate and sharing out of the assets (this includes information whether the succession procedure is initiated by a court or other competent authority on its own motion)

If there is a will and the testator has named an executor, the latter will have the authority to pay out the funeral expenses and any legacies, keep the property in good repair, defend the validity of the will and ensure enforcement of it.

If a partitioner (*contador-partidor*) is appointed, this person will be responsible for division of the inheritance. The partitioner may be appointed by the testator, by the heirs by mutual agreement, by the court clerk (*secretario judicial*) or by the notary on the instruction of heirs and legatees representing 50% of the assets of the estate.

In the absence of a partitioner or in the case of division by the testator, the heirs may distribute the estate between themselves as they deem fit.

In practice, in both cases the division of the inheritance and the award of the property is performed before a notary for evidentiary purposes and for the registration of the rights.

When a partitioner has not been appointed and an heir requests it, division can be performed by the courts. The courts appoint an expert to value the property and a partitioner to divide the inheritance. Also, if requested, the appointment of an administrator and the taking of an inventory of the assets by the courts may also be agreed upon beforehand. The divisions made by the partitioner (with any amendments the judge may make if an heir opposes them) are entered on the notarial records.

7 How and when does one become an heir or legatee?

Those persons entitled to an inheritance or legacy by law or by disposition of property upon death become heirs or legatees upon acceptance of the succession or legacy (see Section 5.2). The effects of acceptance apply retroactively from the moment of death of the testator.

8 Are the heirs liable for the deceased's debts and, if yes, under which conditions?

In the case of outright acceptance or acceptance not under benefit of inventory, the heir will be responsible for all the liabilities of the succession, payment of which could involve not only the inherited property but also the heir's own property.

In the case of the inheritance being accepted under benefit of inventory, the heir is obliged to pay the debts and other liabilities of the succession only to the extent of the assets of the estate.

9 What are the documents and/or information usually required for the purposes of registration of immovable property?

Having the status of heir or legatee does not generally result in the entry in the Property Register (*Registro de la Propiedad*) of the right to specific immovable property because that status does not confer a right *in rem* to specific property. At most, it may result in a provisional entry. Heirs have a proportional right to the entire estate. Legatees have a personal right to demand that the heirs transfer any property bequeathed to them. Effective transfer of rights requires the acceptance of the succession or legacy and the award of specific property. Only in certain cases (such as that of sole heir, sole property, or legatee authorised to take sole possession) is it possible to waive the division and award of the estate.

In order to register the immovable property, either a public deed of acceptance of the succession and of the award of the property (drawn up before a notary) or a court decision is required. This deed must include, or be accompanied by as supplementary documents, the title of succession (will, declaration of heirs, agreement where so permitted), the full death certificate and the certificate issued by the General Register of Wills. Payment of the taxes on the transfer of property by inheritance is also required.

9.1 Is the appointment of an administrator mandatory or mandatory upon request? If it is mandatory or mandatory upon request, what are the steps to be taken?

The appointment of an administrator (*administrador*) is not required under Spanish law; however, such appointment may be agreed upon in the process of division of the inheritance, under certain circumstances.

9.2 Who is entitled to execute the disposition upon death of the deceased and/or to administrate the estate?

If an executor (*albacea*) has been named in the will (under common law), he or she will administer the estate (see Section 6).

The testator may also appoint, in the will, a partitioner for the estate who will appraise the property and divide the assets.

In general, three persons — executor, partitioner and administrator — may be appointed, all of whom have administrative powers that may be altered by the testator or by the judge and, in some cases, by the heirs themselves.

9.3 What powers does an administrator have?

The main duties of the administrator of the estate are as follows:

Representation of the estate,

Periodic presentation of accounts,

Conservation of the state of repair of the property of the estate and any other management acts that may be deemed necessary.

10 Which documents are typically issued under national law in the course of or at the end of succession proceedings proving the status and rights of the beneficiaries? Do they have specific evidentiary effects?

The intestate declaration of heirs is a notarial instrument that proves the status of the legal heirs and their corresponding share.

The public deed of acceptance and partition (and of transfer of legacies, where relevant) drawn up before a notary and by agreement between the parties concerned assigns ownership of specific assets of the estate.

If the succession is brought before a court, the decision handed down granting the partition (and resolving, where applicable, any disputes) will constitute sufficient title and must be formalised before a notary as provided for by law.

Last update: 29/10/2019

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