

Key Differences Between Spanish and German Inheritance Law - An Overview

Inheritance law is a central part of civil law that governs the transfer of assets and rights after a person's death. Both Germany and Spain have specific regulations concerning succession, the drafting of wills, and inheritance tax. Despite some similarities, there are essential differences that are important for both testators and heirs.

It is increasingly common for German nationals to own property in the Balearic Islands and eventually face succession issues. For example, heirs living in Germany inherit a property in the Balearics - what steps must be taken?

This document provides a general overview of the main differences between Spanish and German inheritance law. In Germany, succession is regulated by the German Civil Code (BGB), while in Spain it is regulated by the Civil Code (CC), with some autonomous regions, like the Balearics, having their own civil laws. The following refers to the general rules of the Spanish Civil Code.

1. Commencement of Inheritance

In Germany, inheritance passes automatically to the heir upon the testator's death (§1922 I BGB), without the need for explicit acceptance. However, the heir may renounce the inheritance (§1942 ff. BGB). There may be a single heir or a group of heirs.

In Spain, inheritance must be explicitly or tacitly accepted (Art. 988 ff. CC). The heir must express their will. If real estate is involved, acceptance must be formalized by all heirs before a notary (Art. 1005 CC). Renunciation must also be declared before a notary (Art. 1008 CC).

2. Statutory Succession

In Germany, statutory succession is regulated by §§1924-1936 BGB. Heirs are grouped by order: descendants, ascendants, and collateral relatives. The spouse inherits alongside them, and their share depends on the marital property regime.

In Spain, statutory succession is regulated by Articles 912-958 CC. Legal heirs are the closest relatives, divided into lines: descending (children), ascending (parents), and collateral (siblings). Closer relatives exclude more distant ones. Descendants exclude parents, parents exclude the spouse. In the absence of all, siblings inherit.

3. Compulsory Share

In Germany, the compulsory share is governed by §§2303 ff. BGB. It is a financial claim against the heirs and equals half the statutory share. Entitled persons include children, parents (if no descendants), and the spouse.

In Spain, the compulsory share is more strictly regulated (Art. 763 ff. CC). Entitled persons are known as forced heirs (*herederos forzosos*). The estate is divided into three parts:

- 1) Strict compulsory share (*legítima estricta*) - reserved for children and descendants, cannot be disposed of.
- 2) Improvement share (*tercio de mejora*) - may be assigned to one or more descendants.
- 3) Free disposal share (*tercio de libre disposición*) - may be bequeathed freely.

If there are no children, the compulsory share goes to the parents. The spouse is entitled to a usufruct:

- if there are children: over the improvement share (Art. 834 CC);

- if only parents: over half the estate (Art. 837 CC);
- if no children or parents: over two-thirds (Art. 838 CC).

This usufruct may be converted into a lump sum or assets (Art. 839 CC).

4. Wills

The testator may deviate from the statutory order by drafting a will or a succession agreement.

In Germany, this can be done via an individual will (§1937 BGB), joint will (§2265 BGB), or inheritance contract (§1941 BGB), even privately.

In Spain, there are notarial wills (open or closed) and holographic wills. Joint wills are not allowed, except in the Balearics (due to regional law). Inheritance contracts are generally not permitted, except in some regions.

5. Applicable Law

Since August 17, 2015, EU Regulation No. 650/2012 applies. The applicable inheritance law is based on the deceased's habitual residence, not nationality. However, the testator may choose the law of their nationality in the will.

If the deceased resided in Spain, Spanish law applies; if in Germany, then German law. The testator may also choose the law of their nationality.

6. Conclusion

There are both similarities and important differences between Spanish and German inheritance law.

The regional laws in Spain may add complexity. These differences can significantly affect the transfer of assets and succession planning. Therefore, legal advice is recommended for cross-border cases.

The Gerboth & Partner team will be happy to advise you.

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