

Buyer information Tenerife

Purchasing a Property

Tenerife's legal system is the same as that in mainland Spain. Your main concern is to find the right property for you. Our guide to purchasing a property will give you peace of mind for the rest of the year. There are many estate agents in Tenerife who can help you with your property search.

Our guide to Purchasing a Property

The steps to finding a property are straightforward:

1. Find the property you want – the right island and location
2. Use a solicitor to check the documentation.
3. The solicitor will check all land and property searches to ensure all the paperwork is correct for the property.
4. Powers of Attorney: These can be used to purchase the property however most of the people tend to return to sign for their property in person. If the purchaser cannot return to purchase, they can leave a power of attorney with a lawyer or representative to sign on their behalf.
5. Property purchases require a promissory sales contract. This is the agreement between the purchaser and seller in which the terms and conditions of the sale are written down and signed. We advise that you use a lawyer to guide you through this process.
6. Signing for the deeds of the property must occur in front of a public notary in Tenerife. This can be made by your lawyer or by the parties named on the contract.
7. Your lawyer will also register your property after signing the deeds at notary for you. The property should be registered in the town hall and the registry thereafter.
8. Notary fees and purchasing taxes amount to approximately 6.5% of the value of the property for resale property and is slightly less for off plan /pre-construction property at just under 6%.
9. Lawyers fees. Remember that the notary fees mentioned above do not include the costs of a lawyer. Each lawyer will have their own costs and can be sought directly from them.

Property Taxes

10. **Holding property Annual Rates** – the annual rates are based on a rateable value in Tenerife. This information is available at the town halls and is based on the value of your property. The rates are paid annually between May and June.
11. **Property Tax on rentals** – to be updated
12. **Capital Gains Tax** – To be updated
13. **Other taxes** – self employed people pay 24% tax and SL or limited companies pay 32% tax.
14. **Inheritance/Gift Tax** – a) Property passing on death between husband and wife is exempt unless either party is not domiciled in the UK, in which case the exemption is limited to £55,000

b) Inheritance Tax is a levy paid on your estate after death, should it exceed the Nil Rate Band Limit, currently set at £312,000.

In October 2007, Alistair Darling announced some significant changes to the laws surrounding Inheritance Tax (IHT). He has raised the threshold to £624,000 for married couples and those in civil partnerships. However, the threshold for single or divorced people remains at £312,000, rising to £350,000 by 2010.

Previous to this, every individual had a £312,000 Nil Rate band; however, married couples had to ensure they had sufficient wills in place in order to use both Nil Rate Bands.

Despite the change, those people that are single, divorced or living with siblings will only have a £312,000 threshold.

c) Property charged to Inheritance Tax on death includes not only property owned at death, but also certain gifts made during the last seven years immediately preceding the death, and may also include any benefit received by the deceased during the deceased's lifetime under certain types of trust.

d) If the deceased was domiciled in the UK, the liability to Inheritance Tax applies to worldwide assets. In the case of persons who are not domiciled in the UK, it is limited to assets in the UK

15. **Tenerife Will: It is important to see a lawyer's advice on making a Spanish will. We have provided the information from Mr Michael Rhodes, an English solicitor with a qualified legal practice in Tenerife.**

If you are married, only the first £125,000 will pass to a surviving spouse, or £200,000 if there are no children. If you are not married to your partner, it is quite possible that he or she will receive nothing. Your estate will pass in

accordance with the laws of intestacy which is set down by law and may well mean that your estate will not be divided in the manner you would wish. Making a Will is relatively straightforward and is something which should best be left to your lawyer. He will ensure that your wishes are complied with, that the Will is written in language which is not ambiguous and should ensure that full advantage is taken to minimise the incidence of Inheritance Tax. Finally, he will ensure that your Will is correctly executed (signed). The cost need not be excessive and you will have the peace of mind that the Will is correct and valid.

It is important that if you have both Spanish and English Wills that making amendments to one does not revoke the other.

Intestacy

When a person dies without leaving a valid Will, they are said to die **Intestate**. If a person dies domiciled in the England and Wales, or leaves certain classes of property there, even though domiciled in another country, their assets will be distributed in accordance with the English Laws of Intestacy. These laws will also apply where a person does not deal with his entire estate by his Will, and a person is then said to die **Partially Intestate**. In this case, only the undisposed of assets will fall under the Laws of Intestacy.

The main provisions of the Intestacy Laws are shown below, but further information may be obtained by send an e-mail to the address to your left

For deaths after 31st December 1995, a spouse must survive for a period of 28 days in order to take a benefit.

Distribution

Spouse only with no issue, parents, or brothers or sisters of the whole blood (or their issue)

Spouse will take the entire estate absolutely

Spouse with issue

Spouse takes:

- Personal Chattels.
- Statutory legacy of £125,000 with interest (currently 6%) from the date of death until payment.
- Life interest in one half of the residuary estate.

Issue take on statutory trusts:

- Other half of residuary estate.
- The remainder interest in the half in which the spouse enjoys a life interest.

Spouse, no issue but parents or brothers/sisters of whole blood or issue

Spouse takes:

- Personal Chattels.
- Statutory legacy of £200,000 with interest (currently 6%) from the date of death until payment.
- One half of the residuary estate absolutely

Parent(s) or if none brothers/sisters of the whole blood on the statutory trusts take the remaining half share of residue

If there is no spouse or issue the order of entitlement is:

- Parents
- Brothers and sisters of the whole blood, on the statutory trusts
- Brothers and sisters of the half blood, on the statutory trusts
- Grandparents
- Uncles and Aunts of the whole blood, on the statutory trusts
- Uncles and Aunts of the half blood, on the statutory trusts

Failing any of the above the estate passes to the Crown, as bona vacantia, although application can be made for provision to a dependent person or one for whom the intestate may have been expected to provide

The surviving Spouse may elect:

- in place of the life interest to which she may be entitled (where there are issue), to receive a cash sum which is calculated on actuary tables taking into account her age. The residue will then pass to issue on the statutory trusts.
- to purchase the matrimonial home if it is held in the sole name of the intestate or as tenants in common. The value is taken out of the statutory legacy and application must be made within twelve months of death. There are conditions attached to certain types of property where the consent of the Court is required.

Meaning of the "Statutory Trusts"

Where the estate is stated to be held for issue on statutory trusts, it means that children take to the exclusion of remoter issue (their own children) unless that child predeceases the intestate when that child's issue will take their parent's share. Such issue will become entitled to receive their entitlement upon reaching the age of 18 years.

Issue

Means children and remoter issue (lineal descendants - grandchildren, greatgrandchildren etc - but not spouses). Adopted children are treated as the children of the adoptive parents.

Legitimated children are treated as if they were born legitimate.

For deaths after 4th April 1988, the distribution of assets on intestacy is made without reference to whether a child is legitimate or not.

This is only a brief summary of the Intestacy Laws and expert legal advice should always be taken.

This information is just a guide to understanding will and we advise that you seek legal advice on these matters.

