

Getting a divorce in Spain

Our guide to divorce procedures in Spain.

Marriage and partnerships in Spain

Getting a divorce in Spain is a relatively straightforward process provided both parties agree on the appropriate arrangements for children and assets. The divorce law in Spain is no-fault, meaning that it is not necessary to cite a reason in order to obtain a divorce. It only requires a petition from one of the spouses. Non-Spanish nationals can obtain a divorce in Spain if they or their spouse is a Spanish resident or a Spanish national.

The divorce rate in Spain places it among the mid-range of European countries. Divorce is actually a relatively recent phenomenon in Spain and was only introduced to the country in 1981. Since then figures have shown a steady increase in the incidence of divorce. In 1990 nine years after it was made legal, the divorce rate was 0.6 divorces per 1,000 inhabitants. This increased to 0.9 divorces per 1,000 people in 2000 and rose substantially to 2.2 divorces per 1,000 people in 2010. This is set against an average of 2.0 for the 27-member EU.

What it means

Once the divorce is granted, the parties to the marriage can remarry legally. Both parties will immediately lose any marital inheritance rights and widow's pension rights, as well as those obligations directly derived from their marriage. In addition, any joint financial liabilities the couple has in relation to third parties are terminated. However, the divorced parents still keep their duties with regard to their children.

Spanish courts generally award alimony only where one of the spouses is clearly disadvantaged economically as a result of the divorce. A typical example would be where one spouse has given up a career to look after the children. Alimony awards vary but are generally between 15 – 40 percent of the higher income.

Where younger children are concerned, custody is awarded to the mother in most cases, unless there are factors that demonstrate this would not be in the best interest of the child. In recent years the courts have paid greater attention to considering awarding joint custody. If the couple agrees to share visitation rights the judge will take this into account.

Regarding the division of assets, the rules are affected by where the couple is living. In Catalonia, Aragon, Navarre, Balearic Islands and the Basque Country, '*Separación de Bienes*' is the default system. This allows a couple to retain ownership of items that they brought with them into the marriage. Where joint purchases were made during the marriage they are divided according to the contribution made by each party. Court rulings have also attributed a financial value to non-financial contributions, such as doing domestic chores or raising children.

In the other Spanish regions, '*Sociedad de Gananciales*' applies, where all assets acquired during the marriage are considered to belong to both spouses equally, unless they are 'private goods'. Dual ownership would apply to rental income, businesses and goods bought via installments from the 'matrimonial pot'.

How to get a divorce

You may get divorced in Spain only if you comply with any of the following requirements:

- If you and your spouse are Spanish residents at the time of filing for divorce.
- If you and your spouse are Spanish nationals, in case of divorce by mutual agreement, wherever you are located.
- If you are the plaintiff and are a Spanish national and living in Spain.
- If you are the defendant and are a Spanish resident (regardless of your nationality).

The spouses may divorce by mutual agreement when they have been married for at least three full months. Whenever the parties ask the judge for a divorce order, a proposal of governing convention (*convenio regulador*) must be attached to the petition. It is not necessary for the couple to have been legally separated for any period of time before filing for divorce.

In certain cases a party may petition for a divorce without waiting for the three-month period. This would apply when there is a proven danger to the life, physical integrity, liberty, moral integrity or sexual liberty or indemnity of the petitioner.

Types of divorce

Uncontested divorce

The procedure for getting a divorce is quickest when both parties agree to the dissolution of the marriage. Along with the claim the parties shall present the governing convention (*convenio regulador*). This is the contract of agreement covering the following issues:

- Cohabitation and custody arrangements for any children, including visitation rights of the non-custodial parent.
- The sum that has to be paid for children's alimony.
- Any compensation allowance or alimony that, if any, shall be made by one of the spouses in favour of the other spouse.
- Use of the family dwelling.
- The manner, if any, in which the spouses continue to contribute to family expenses.

The marriage certificate and the birth certificates of the children are always required, as is the intervention of a legal representative (*Procurador*) and a Spanish lawyer.

The power to grant a divorce rests with the judge, who also has the authority to approve the governing convention. Assuming there are no unforeseen issues, an uncontested divorce can be concluded within a few weeks.

Contested divorce

In this case the divorce petition is filed by only one of the parties to the marriage, sometimes known as a 'contentious' divorce, and the court procedure is long and somewhat complex. If the parties fail to agree on the governing convention, it may require negotiation and communication between lawyers and the production of third party evidence.

Depending on the circumstances, before starting the divorce procedure, provisional measures may be set up in order to make property settlement, child custody, spousal support and alimony arrangements.

The marriage certificate and the birth certificates of the children are always required, as is the intervention of a legal representative (*Procurador*) and a Spanish lawyer.

A contested divorce can take anywhere from a few months to a more than a year.

Outcome

The sentence determining the divorce will be filed to the Spanish Civil Registry. This sentence can be appealed. The parties may apply for the modification of the measures established by the sentence, and such modification shall be made by means of a subsequent judicial dictum.

Please note these are only general guidelines and not definitive statements of the law. All questions about the law's applications to individual cases should be directed to a Spanish lawyer.

Sources

epp.eurostat.ec.europa.eu

www.iglesiasociados.com

www.myadvocatespain.com