



## THE USUFRUCTO CLAUSE – THINGS TO CONSIDER

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The whole idea of the usufructo clause is to protect Spanish property against being lost through the remarriage of a surviving spouse or them going into care and the property being sold to fund that care.

The usufructo clause in the Will guarantees the 50% of the property owned by the deceased will not be lost in either of these scenarios but will be protected and be guaranteed to go to the beneficiaries named in the deceased's Will.

When a Spanish property is sold after the death of one party, if for example, the survivor wishes to downsize in Spain, the survivor will own 50% of the existing property with the beneficiaries named within the deceased's Will owning the other 50% equally between them (but they cannot do anything with it, sell it, or restrict the access of the survivor, they have to wait until the survivor dies or sells to inherit fully).

As such, the new Spanish property would be bought by the survivor and the listed beneficiaries jointly. If we are the nominated executors, we can affect this easily and without the requirement for any of the beneficiaries to travel to Spain.

This potential scenario should ideally be discussed with the beneficiaries in advance to ensure that they are all fully aware of what your intentions are and to ensure that they would not object of course as that could cause an issue and if you believe this to be the case, the beneficiary who may object should not be included as a usufructuary - just as a named beneficiary of the Spanish Wills – an example of this is highlighted here:

Mr and Mrs have 3 children. 1 of the children could be an issue in terms of objecting to releasing their share for the survivor to go into a new property, possibly because of external influence, debt, an addiction of some kind, general poor money management or a potential future divorce.

So, just 2 children should be named as usufructarios of the 1st to die's 50%, meaning when the 2nd party dies those 2 children will already own 12.5% of the whole property each.

On 2nd death then the survivor leaves 66.6% of their half of the property to the child who may have potentially objected meaning they will then own 33.3% of the whole property. The remaining 33.4% is split equally between the 2 children that were the usufructaries of the 1st to die's half, meaning all 3 children will end up owning the property equally on 2nd death with the extra protection provided by the usufructo clause in full effect against the survivor remarrying or going into care in the meantime and as a result preventing the 50% share of the property belonging to the first to die subsequently being lost.

The remainder of the estate could be divided however each party wished, but usually goes from party a) to party b) on the first death and then on 2nd death, gets split equally between the children.

The same would also be true if selling up in Spain and purchasing an alternative property back in the UK, but in this scenario, we would be advising that the new property in the UK be bought with a Trust in place to protect it going forward and you should let us know at the time if this is the case and we will discuss this with you.

Don't forget prices in the UK are significantly higher than in Spain, so this option may not even be a viable one, so be very careful about opting not to include or removing altogether the valuable protection an usufructo provides and balance your consideration of the very real possibility of later life care for example against the potentially slim or even non-existent likelihood of the survivor being in a position to sell up in Spain and purchase an alternative property again back in the UK.

**Call us on: 865 756 058**

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*Where there's a Will there's a Way*

