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Getting a Divorce in Spain

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MATRIMONIAL BREAKDOWN

Unfortunately divorce is rarely a straight-forward matter unless there are no children, no joint assets, no pent up anger or nothing left to argue about! Usually though there are assets involved whether it is property or money in the bank and where there are children under the age of 18 then inevitably, they also become involved.

English or Spanish Law

Fortunately foreigners living in Spain can divorce in the Spanish Courts and the Courts will apply the law of their nationality. For example if an English couple have been living in Spain for seven years they could apply for divorce in their local Spanish Court but would need to establish grounds for divorce under the laws of England. Therefore their lawyers would need to have some knowledge of English law in order to advise them properly.

However if you decided to divorce in England & Wales then the instigating party would have to be resident there. Or if the terms of the divorce have been agreed and one of the spouses had returned to England & Wales then he or she could apply to the English Courts to rubber stamp the divorce.

Walking out

If one of the spouses walks out of the matrimonial home they could provide their spouse with a ground for divorce on the basis of abandonment. Unless they have a good reason such as domestic violence or if they applied for separation within 30 days. In this case any victim of domestic violence should make a denuncia to the Guardia Civil straight away and then seek medical attention as the Doctor's report could be used as evidence later.

Children

Where children are involved the Spanish Courts will normally allow the children to remain in the matrimonial home. Therefore the parent who has custody of the children is likely to be granted use of the matrimonial home.

Before any matrimonial breakdown most couples will agree that the children were the most important part of the relationship. Once cracks start to appear in the marriage invariably one of the partners decides to go their own way and the children are used in the ensuing affection battle. Therefore it is important as early on as possible to agree visitation rights, child maintenance and where it can be chosen, custody so that the children do not suffer. Ultimately both partners have to put their children above any individual animosities.



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Separation and then divorce

Couples who have decided to go their separate ways and who request the Court to apply Spanish law can apply to the Courts for official acknowledgement that they are separated and at the same time agree on financial matters and custody of the children, if any. If they do not make their separation official then after two years they can apply for divorce directly. However if they do make their separation official then after a year of requesting this the divorce can be applied for directly. If the couple have agreed on maintenance payments and custody then the divorce will go through quicker than if there are issues to be settled by the Court.

Who gets what?

If Spanish law applies it will depend on the economic matrimonial regime that they have chosen. Where English law applies the approach is more flexible and the Spanish Court will weight up a variety of factors including the children's needs, the contribution of each party to the household and to the marriage. Increasingly under English law the Courts are moving towards a 50/50 split.

It is sensible to seek independent legal advice at an early stage to ensure that you are aware of your rights.

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