



MAKING A WILL

A last will and testament is a document in which a person declares their last will, indicating what is to be done with all their assets after their death.

Having a last will and testament ensures that your wishes will be carried out when you die. In addition, it will also avoid confusion and make the distribution of your inheritance easier and cheaper. As a result, it is recommendable to have a last will and testament, especially after a certain age or in certain adverse health conditions.

There is no international standard for the way in which last wills and testaments should be made abroad, but most countries in the European Union have signed an agreement (The Hague Convention of 1961) which accepts the last will and testament drawn up in accordance with the legislation of the country of residence or in which the fixed assets included in the last will and testament are located. In general, European citizens do not encounter problems for making a last will and testament in Spain.

For foreign citizens with fixed assets in Spain, especially if they also live in our country, the best idea is to make a last will and testament in Spain for the said assets if the legislation of their country so allows. Making a last will and testament in Spain is quite cheap and ensures a simple later distribution of the person's assets.

LAST WILL AND TESTAMENT IN SPAIN

In Spain, there are basically three types of testaments: open, closed and handwritten.

o **Handwritten:** This type of testament must be written entirely in the testator's hand. It has several inconveniences, including the fact that no advice is given by the notary public, it can be lost and it must be taken to the courts to be validated when the testator dies.

o **Closed:** the testator visits the notary public and gives him his last will and testament, which is inserted in an envelope and sealed. This also involves significant inconveniences, such as the lack of control over the legal nature of the content of the testament and the need for it to be validated by the courts after the testator's death.

o **Open:** this is the most common and the most recommendable. It is made directly in the presence of the notary public and involves many advantages:

- The notary public offers advice about the legal form of successfully ensuring what you want to do with your assets.
- It is very cheap, normally costing between €40 and €70.
- The last will and testament is kept by the notary public and registered in the Register of Last Wills and Testaments, which makes it more possible for last will to be carried out.
- In addition, there is no need to go to the courts once the testator has died to carry out their last will.

OPEN TESTAMENT

To make an open testament in Spain, the only requirement is to be older than 14 years of age and not be incapacitated.

You have to go to the notary public's office with your identity document (passport, residence card, etc.) and your aliens ID number (in Spanish, NIE) and in the case of European Community citizens, with the Certificate of Inscription in the Central Registry of Foreign nationals, if you have one.

You will normally require the presence of two witnesses.

If you do not speak Spanish or you want your last will and testament to also be written in your language, you must go to the notary public's office accompanied by a translator, who does not necessarily have to be an official translator. The translator will translate your last will into Spanish and the testament will be written in both languages, preferably in two columns, indicating the language used by the testator.

You can modify your testament whenever you want; making a new one that will also be registered and will replace the former document.

The notary public should be told that the testament being made refers only to your assets in Spain so that he records the fact in the document.

It would be recommendable to attach a copy of the Spanish testament to the testament in your country and vice versa so as to avoid later confusion. Indeed, in some countries, the Spanish testament can be registered in the corresponding Register of Last Wills and Testaments.

The nationals of certain countries, including those who have signed the abovementioned Hague Convention, can dispose of all their assets (those located in Spain and abroad) by virtue of a Spanish testament, although it is more advisable to make two testaments and bind them together.

ADVANCE HEALTHCARE DIRECTIVE (ALSO KNOWN AS LIVING WILL, ADVANCE DIRECTIVE OR PERSONAL DIRECTIVE)

- Apart from the Will itself, it is possible to draw up and sign a document of this kind in Spain.
- The document enables an adult or an emancipated minor, in full possession of their mental faculties and not legally incapacitated, to state their wishes regarding the medical treatment they want to receive should they find themselves in a situation in which circumstances prevent them from freely expressing their wishes. They can also decide on whether to donate their organs or leave their body to science.
- This document can be signed in front of a Notary or the Health Authority, and is then inscribed in the appropriate register.

INHERITING IN SPAIN

When a person dies and has assets in Spain, their heirs have to complete a number of procedures and obtain certain documents. The main documents required are as follows:

- o Death certificate. This is obtained from the Civil Register corresponding to the deceased's last abode. In Spain, at least 15 days must have passed since the person died in order to obtain the certificate.
- o Certificate from the Register of Last Wills and Testaments, which will indicate whether or not the deceased had made a testament in Spain and, if so, the notary public before whom he did so (see section on "offices and registers").
- o Life Insurance Certificate, with details of any Life Insurance taken out by the deceased, plus the name of the insurance company and the policy number, enabling the heirs to make a claim.
- o A copy of the testament, where applicable, which can be obtained from the notary public where it was made or from any other notary public's office, a copy of the so-called Declaration of Heirs, which identifies the heirs if no testament is left. In some cases, the declaration of heirs will have to be made in front of a court of law.

As the deceased was not Spanish, some of the procedures and documents may have to be obtained from outside Spain. When the documents are to be considered valid in Spain, they must bear the so-called Hague Convention Apostille and be translated by an official translator.

In addition to the aforementioned documents, the documents concerning the deceased's assets must also be collected:

- o Deeds of ownership of the fixed assets. It is also a good idea to obtain an office copy from the Property Register concerning the said assets and the corresponding receipts for payment of the last property tax paid (in Spanish, IBI).
- o Bank certificates of the balances of the deceased person's accounts.
- o Documentation concerning the existence of life insurance policies.
- o Documentation concerning vehicles, where applicable.

Once they have all the documentation, the heirs should go to a Notary's office, where they can get correct information on the procedures they need to register the deceased's assets in their favour.

One very important matter is that when, as heirs, you receive assets or rights of any kind that are located in Spain, including amounts paid as life insurance beneficiaries, you must pay the so-called Inheritance and Gift Tax (in Spanish, ISD).

INHERITANCE AND GIFT TAX (ISD)

This tax has to be paid whether you live in Spain or not, and there are certain differences in the procedures if you do not live in Spain.

The ISD must be paid by completing form 650 or 652 (simplified version), which can be obtained from the Consellería de Economía, Hacienda y Empleo (Department of Economy, Taxes and Employment) or from any payment office. It can also be downloaded from the aforementioned department's website.

The payment must be made to the Generalitat Valenciana if the last abode of the deceased person was in Comunidad Valenciana. If the deceased was not resident in Spain, the payment will be made to the State Tax Authorities by completing the national 650 form, which can be downloaded from the website indicated below and sent by ordinary post to the corresponding address.

The term for paying the tax is six months after the death of the person from whom you inherit. You can apply for the term to be extended for another six months. Failure to pay the tax in the corresponding term leads to a fine.

The final amount to be paid is calculated as a percentage of the value of the assets. This percentage will be higher or lower depending on a number of factors, such as the family relation with the deceased and the total value of the inheritance. The amounts to be paid, as well as the possible deductions and bonuses are given in the legal texts indicated below.

Likewise, if property is involved, the heirs will have to pay the so-called Urban Land Capital Gain Tax (the IIVTNU), also known as "plusvalía municipal" [municipal capital gain tax].

REFERENCE LEGISLATION

- Chapter I, Title III, Book III of the Civil Code, articles 662-743.
- Mortgage Act (Decree of 8 February 1946).
- Notary Regulations (Decree of 2 June 1944).
- Mortgage Regulations (Decree of 14 February 1947).
- Inheritance and Gift Tax Act 29/1987, of 18 December.
- Royal Decree 1629/1991, of 8 November, which adopts the regulations governing the inheritance and gift tax.
- Generalitat Valenciana Act 13/1997, of 23 December, which regulates the Regional Tranche of Personal Income Tax and Other Transferred Taxes.
- The Hague Convention governing legal conflicts regarding the form of last Wills and Testaments (October 1961), signed by the following countries of the European Union: Germany, Austria, Belgium, Denmark, Spain, Estonia, Finland, France, Greece, Luxembourg, Netherlands, United Kingdom, Sweden, Ireland, Poland and Slovenia.
- The Basle Convention on the establishment of a last wills and testaments registration system (May 1972), signed by the following countries of the European Union: Belgium, Cyprus, Spain, Estonia, France, Italy, Luxembourg, Netherlands and Portugal.

OFFICES AND REGISTERS

- Notaries public of the province of Alicante, whose addresses can be found on the following website.
- Registro General de Actos de Última Voluntad (Central Register of Last Wills and Testaments)
Plaza de Jacinto Benavente, nº 3, bajo. C.P. 28012 Madrid. Telephone: 91 389 53 22
Open to the public from Monday to Friday, 09:00 to 17:30 and Saturdays from 09:00 to 14:00.
- Consellería de Economía, Hacienda y Empleo (Department of Economy, Taxes and Employment) Territorial Department of Alicante
C/ Churruga nº 25, CP 03003. Tel. 012. Fax 965 126 414. Open to the public from Monday to Friday, 09:00 to 14:00, and Tuesdays and Thursdays from 17:00 to 19:00.
- Delegación Especial de Madrid de la Agencia Estatal de Administración Tributaria (Special Delegation of Madrid of the State Tax Authorities). National Tax Office. Non-resident inheritances.
C/ Guzmán el Bueno, 139. C.P. 28071 Madrid. Telephone: 915 826 767. Fax: 915 826 654
Open to the public from Monday to Friday, 09:00 to 14:00.

USEFUL WEBSITES

Website with information about notary activities and the addresses and telephone numbers of all the notaries public of Spain:

www.notariado.org

Website of the Spanish Ministry of the Interior (Register of Last Wills and Testaments):

www.mir.es

Conselleria de Economía, Hacienda y Empleo (Department of Economy, Taxes and Employment):

www.gva.es/c_economia/web/html/home_c.htm

Agencia Estatal de la Administración Tributaria (State Tax Authorities):

www.agenciatributaria.es

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