

LAST WILL IN SPAIN

After me the flood. Anyone who thinks like that doesn't need a will. But if you want to leave your heirs an orderly estate, you should settle your inheritance early.

Most people think about their own estate planning far too late or not at all. Even many times there is no will. However, this can cause significant problems for the heirs.

Your family will have a hard time if you die. In addition to grief, they have to deal with a lot of paperwork and countless administrative procedures. With an orderly estate you avoid all this troubles. This prevents possible dispute between the heirs and gives more time to deal with the grief. Almost all of the conceivable disadvantages can be easily avoided thanks to a will.

What can you regulate in a will?



With a will, you are basically free to determine who should inherit, to what extent and who should be disinherited if necessary. Nobody can force you to do a certain thing. However, there is a legal restriction: the compulsory part. The children and the

spouse receive at least their compulsory part.

Heir and Substitution Heir

The inheritance always refers to the entire estate, not to individual items. Individual objects count as legacies instead of inheritance.

The easiest way is to name a single heir. This avoids a complicated community of heirs who have to divide the estate and possibly arguing for years.

Normally the spouses initially name each other as sole heirs. The sole heir receives the entire inheritance. The subsequent heir (usually the common children) receives the estate after the previous heir.

Non-profit organizations like associations and foundations can also be named heirs. Be sure to name always a replacement heir in the case that the intended heir don't accept the inheritance, dies before or just refuse the inheritance. Otherwise the legal succession will occur again, which may not correspond to your own wishes.

What to keep in mind making a Spanish will?

A joint will or inheritance contracts are inadmissible under Spanish law and are not recognized. These forms of last will do not exist in Spain. In Spain, each spouse determines their assets separately and each spouse can only set up an individual will for

themselves. A will that does not conform to the form required by law in Spain is not valid.

Advantages of a notarial will in Spain

The advantages of a notarial will in Spain are, among other things, that the notary not only guarantees compliance with the legally required form, but above all the accuracy of the content. The notary also checks the testator's capacity to testify. In this way, the Spanish will, which is drawn up in front of a notary, offers absolute legal certainty and thus avoids years-long and expensive inheritance disputes. Further practical advantages of a notarial will in Spain are the ability to act quickly for your heirs and the uncomplicated processing of the acceptance of the inheritance. Annoying administrative procedures and time-consuming bureaucratic procedures are no longer necessary, such as applying for a certificate of inheritance, obtaining apostilles, certified translations of documents, etc. In addition, only notarized wills are stored in the Central Register of Wills in Madrid. This is the only way to protect your will from theft, forgery, loss or destruction. Apart you will find it quickly in the event of an inheritance making it easier to process the inheritance in Spain.

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The deadline for submitting the inheritance tax return is only six months. Six months is a short term and without a will it is not possible to present the taxes in terms of time. If this deadline is not met, there is a risk of a fine. That's why you should have a will notarized before a notary in Spain.

Without a will

If the deceased did not leave a will in the event of death, legal succession automatically occurs. And nobody can change it anymore. Most married couples assume that in the event of death, the surviving spouse will inherit everything alone. But that is a misconception. Legal heirs are primarily the children of the deceased.

If the deceased also had his last habitual residence in Spain (Residencia), only Spanish inheritance law applies to the processing of the inheritance. The probate court in the home country is no longer responsible for issuing a certificate of inheritance, which makes things even more complicated for the heirs. In this case the heir identification procedure (declaración de herederos) has to be carried out in a notary, which among other things requires the involvement of two witnesses. You have to be prepared for the fact that without a will you have to spend

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significantly more time and a lot more money to process the matter.

The notarial will in Spain saves your heirs a lot of money, time and stress.

Revocation of a previous will

A will is not set in stone. Your living circumstances may change. For example, you get married again or your children turn away from you. As you get older, other people who lovingly care for you may become more important to you than your own family. A will only ever fits into a certain life situation. You can change or revoke it at any time. The revocation have to be done in notarized form.

Inheritance law

In the past inheritance law used to depend on the nationality of the deceased. The European Inheritance Regulation has been in force since August 17, 2015 and now the only decisive factor is where the testator had his last habitual residence at the time of his death. This means that, for example, for a German, Swiss or Austrian whose last habitual residence (Residencia) was in Spain, Spanish inheritance law applies, which means a significant difference to German, Swiss or Austrian inheritance law. Now the children inherit the assets and the spouse only receives pure usufruct, because Spanish inheritance law is very unfavorable for the

spouse. Children are given preference over spouses. The testator can avoid this by expressly choosing the inheritance law of his nationality in the will.

Disinherit

Some children might prefer to be excluded from the inheritance because they have an unhealthy relationship with each other or even because contact has been broken off completely. Excluding a child from the inheritance does not necessarily mean that he or she will receive nothing at all. The child is entitled to the compulsory part.

Please also note that the exclusion from the inheritance not only excludes the disinherited child, but also his children and grandchildren if they are not specifically considered in the will.

However, you can outsmart the claim to a compulsory part by favoring others early on through asset transfers. Where there is nothing to be gained, nothing can be demanded.

Conclusion

Inheritance matters are often very complicated. We know from experience only too well what enormous disadvantages it has for the heirs if the estate is not regulated. In any case, we recommend that you look for advice from a legal expert. You should not unreservedly trust recommendations in internet forums. Most contributions and answers are unqualified and highly subjective. Anyone who saves on professional advice

causes considerable problems and high costs if the inheritance is not properly regulated in the will.

For both residents and non-residents who own assets (real estate, bank account, car, etc.) in Spain, we strongly recommend that you draw up a will and expressly state in it that the following applies to your estate. Inheritance law of your nationality should apply.

If you have any questions regarding the regulation of your estate, we will advise you on the precise and correct formulation of your last will. We write your will bilingually, so that you always know what you are signing at the notary.

Prevention is better than cure. Therefore we recommend a complete precautionary package, i.e. a combination of a will, mutual general power of attorney and living will, in order to cover as many eventualities as possible. Only those who think about it in good time are protected in every phase of life.



RECHT | STEUERN | IMMOBILIEN

ALLES AUS EINER HAND

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