

LIVING WILL IN SPAIN

Prepare for a dignified emergency.

In recent years the importance of a living will has been increased significantly. In the event of illnesses it has become common practice to determine in advance which medical treatments desired or should be rejected. This is linked primarily on life-sustaining measures, if there is no chance of a “worthy” life or the natural dying process has already started.



Although nobody is legally obliged to have a living will, everyone at least should consider this. In case that you can not longer express yourself intelligibly, the living will offers a clear opportunity to communicate with your doctor.

As long as you are able to give your consent and communicate your wishes the living will not become effective. You have the right to tell your doctor directly what you want, and even an existing one to revoke a living will.

However, if there are no made clear decisions, the survivors have to decide and this can be avoided by submitting a living will. So you guarantee your wishes and apart not burden

Central regulations in your living will

The central regulations in a living will affects medical and nursing staff measures such as life support treatment, pain treatment, artificial nutrition and organ donation.

You decide with the living will the scope of medical measures. The decision is only up to you.

You decide the situations in which you do this want to allow or prohibit measures. Therefore is important to communicate clearly the treatments that you allow or should be omitted. For example if you wish in certain situations revitalizing measures or not.

Legally binding living will

In Spain the creation of a patient decree is regulated by law. So that the living will becomes binding for the treating person, it has to fulfill certain requirements. We recommend to set up the living will in a Spanish notary as this provides a guarantee that the necessary formal requirements are be respected.

It is also of great importance emphasize that a foreign living will, which is translated into Spanish and no fulfil the prescribed formal requirements is legally invalid in Spain. Doctors and hospitals will not recognize the non-compliant orders and accordingly ignore them. Therefore it is crucial to ensure that the living will is legally valid.

Election of representatives and replacement representatives

It is recommended to appoint a trusted person as representative to ensure that your wishes regarding medical treatment actions are respected. It can be the partner of family member, preferably the children.

If you are no longer able to decide by yourself the designated representative steps in action. It is important to understand that this representative is legally obliged to comply with instructions specified in the living will.

However, you should take in mind that the selected representatives may fail because of personal or health reasons and makes a representation impossible. For these cases it is advisable to have a replacement representative to ensure that your instructions will be carried out.

Organ donation: Spain's success with presumed consent

Organ donation helps to save life or at least improves health. There is no limit of age for organ donations. The legal standard for organ donation is the brain death.

In Spain, the organ donation is regulated according to the principle of presumed consent. Since 1989 Spain practiced the presumed consent it becomes to be the global leader of organ donations. This means that is allowed to remove organs provided that the deceased person not expressly the opposite stated in a living will. In Germany or Switzerland, on the other hand, Organ removal only follows if the dead person had expressly agreed to this during

their lifetime and is certified by an organ donor card or with the consent of relatives. If you do not with the donation of your organs you have to mention it in the living will.

Active euthanasia legalized in Spain

Spain legalized active euthanasia in June 2021 and is now the fourth European country after Netherlands, Belgium and Luxembourg which introduced this regulation. With this legislation, doctors in Spain can now provide active euthanasia for patients who suffer from unbearable pain and without hope of recovery. This is a significant step for the dignity and self-determination of patients in Spain.

The legalization allows both aid and assistance to suicide as well as active euthanasia the intended cause of death. This marks a clear difference to Great Britain, where active euthanasia is generally prohibited. Both active killing and active killing on demand are prohibited under criminal law, not only in Great Britain, but also in Germany, Austria or Switzerland.

In the most European countries is allowed currently only the passive and indirect euthanasia. Passive and indirect euthanasia includes life-shortening and pain-relieving necessary measures. This could, for example, be foregoing nutrition or use of extremely strong painkillers and medications.

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Overall, it is advisable to deal with the issues of suffering, illness and death early on

Individual orders instead of ready-made sample forms

Unfortunately, many sample forms that allows just to mark certain content, are risky, because of their variety of interpretation. If you mark just with crosses this can lead to misunderstandings later. Therefore is important to choose clear and understandable words so that your wishes and treatment needs can be implemented without misunderstandings.

In order to avoid difficulties in advance, it is strongly recommended that you avoid sample forms and instead issue individual orders through a legally qualified person. This step is not just to avoid formal errors but in particular also the prevention of content errors.

Proper storage of living wills

In the case of an emergency it is crucial that doctors can be informed quickly about living wills. An important piece of advice is to have deposit several copies of the wills in different locations. This insures to get the information quickly in an emergency case.

It is strongly advisable not to keep the living will in a safe, as this will make it difficult to access it quickly or even make it impossible. The actual purpose of a living will is to

Provide easy access for third parties to enable the individual wishes and decisions of those affected. Therefore, it is in your own interest to apply early a safe and accessible storage. This ensures that the implementation is guaranteed.

Revocation of a living will

It is important to check regularly whether Your living will is still up to date and corresponds to your current ones attitudes and ideas. It is up to you to change or revoke it completely at any time, especially if you think that it not corresponds to your actual ideas anymore. Even a revocation can be done also verbally, it is not recommended because of a possible lack of verifiability.

Our tip

In order to optimize your own future you should consider various legal documents. The living will plays a central role and could be supplemented with a special power of attorney for the case that you are not able to make decisions by yourself. The combination of these documents together with a will would be an optimal precautionary package.

Regardless of your current life situation we recommend that you look for advice just from experts in the matter. Only this advice ensures that your personal needs and requirements are taken into account.

It seems that internet forums can offer simple solutions but based on our experience in a lot of cases the circulate information is unreliable. Do not blindly trust the recommendations in

online discussions. Information from Internet sources should be viewed with caution, particularly when medical and legal issues are involved. Answers are often written by laypeople and do not always reflect the reality or current legal situation.

Conclusion

As everyone has a own idea and individual wishes regarding death and medical procedures there no exist a universal solution. For a tailor-made solution it is essential to get the advice of an expert in the matter who knows the compliance with Spanish regulations and laws, especially regarding of a living will.

Overall it is advisable to get involved early on dealing with topics of suffering, illness and death in order to protect the own autonomy as well as ensure support for the family in challenging times.

It is important to emphasize that this article only provides an overview of the possibility of precautionary measures for a dignified emergency and the legal regulations of a living will. It can not replace an individual advice. Professional support is essential when creating a living will.

As experienced consultants, we specialize in preparing legally binding documents such as letters of attorney and formulated orders. We will prepare a living will for you in Spanish and English, so that you always know exactly what you are signing at the notary.



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ALLES AUS EINER HAND

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