



San Miguel Centre
Calle Lope de Vega 45,
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Telephone: 966 723 733 (24 Hr Emergency Line)

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INFORMATION SHEET No 30

Power of Attorney

A power of attorney is a way of giving someone you trust the legal authority to make decisions on your behalf. You can give a power of attorney to any adult with full mental capacity.

Importance of capacity and consent.

In Spain and in the UK, everyone is assumed to have capacity to make decisions for him/herself. Individuals must be given help to make a decision themselves, even when we consider it is an unwise decision. Both countries recognise that there are circumstances when a person lacks the capacity to make decisions. Any process to determine if a person lacks capacity shall be done by professionals following legal procedures.

In Spain they should be referred to the Public Prosecutor – Fiscalia. Application can be made by husband/wife or the children and in their absence it can be made by the parents. If these relatives are not available anyone can inform the Public Prosecutor (“Fiscal”) and he/she will make the application.

www.fiscal.es/web/fiscal/-/organigrama-discapacidad-y-mayores
www.fiscal.es/fiscalias-territoriales

How can I arrange a power of attorney?

It is important to know that you don't need to wait for illness to organise a Power of Attorney. To arrange a power of attorney, you visit a notary's office, show your NIE (identification number in Spain) and pay an administrative fee (the *Poder de pleitos* or *poder general*). The Power of Attorney will stay in force until it is cancelled. You can cancel a power of attorney at any notary office in Spain.

How does it work?

The notary will advise you on the appropriate power of attorney for the situation you want it to cover. For example, you can give a one-off power of attorney to someone to manage the sale of a property you have in Spain, or you can give a general power of attorney to your representative to manage a range of legal processes and decisions on your behalf. You cannot usually give a power of attorney to another person to make a will on your behalf except in very limited circumstances.



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Types of power of attorney in Spain

There are different types of power of attorney to cover different circumstances:

- **General power** (*Poder general*): you authorise your representative to act on your behalf in various legal and practical situations. The most common are:
 - **Power for lawsuits** (*Poder para pleitos*): this is the most popular in Spain. You are allowing your representative to go to court on your behalf.
 - **Power to manage assets** (*Poder para administrar bienes*): the representative will be able to manage your assets such as money, inheritance and things you own (but not mortgages and the sale or purchase of property).
 - **General power** (*Poder general*): a wider power to manage your affairs including the sale of property.
- **Special powers** (*Poderes especiales*): to manage a specified one-off activity, such as buying or selling goods, making a bank transfer or accepting an inheritance.

Power of attorney abroad

A Spanish power of attorney can be recognised in other countries. It will need to be certified by an additional process called an apostille which is also done by a notary. The Hague apostille is recognised in most countries.

What happens if I become incapacitated?

You must have full mental capacity to grant a power of attorney to another person. If your mental capacity is in doubt, you will not be able to grant a power of attorney. Therefore, you need to plan. It is important to act as soon as possible if you have been diagnosed with dementia and you may lose your mental capacity in the future.

What is mental capacity?

Mental capacity means the ability to make or communicate specific decisions at the time they need to be made. To have mental capacity you must understand the decision you need to make, why you need to make it, and the likely outcome of your decision.

Some people will be able to make decisions about some things but not others. For example, they may be able to decide what to buy for dinner, but be unable to understand and arrange their home insurance. Alternatively, their ability to make decisions may change from day to day.

Needing more time to understand or communicate doesn't mean you lack mental capacity. For example, having dementia doesn't necessarily mean that someone is unable to make any decisions for themselves. Where someone is having difficulty communicating a decision, an attempt should always be made to overcome those difficulties and help the person decide for themselves.



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I have a partner, can they act for me if needed?

If you are married or in a civil partnership, you may have assumed that your spouse would automatically be able to deal with your bank account and pensions and make decisions about your healthcare if you lose the ability to do so. This is not the case.

Without a power of attorney, they won't have the authority. It therefore makes sense to arrange your power of attorney now whilst you are fit and healthy, so you know that you have things covered for you and your family if you ever need someone to act on your behalf.

Living Wills

A Living Will sets out what medical treatment or care you want to receive if you lose capacity and can no longer communicate this yourself. For example, you could specify that you do not want to be put on a ventilator.

Unlike a Power of Attorney, a Living Will does *not* appoint a person to manage your care going forward, and it does not cover financial aspects. A Living Will is not legally binding in Scotland.

In these respects, Living Wills have clear limitations, but they still have important uses. For example, healthcare professions must still take into account any wishes you express in a Living Will.

In addition, it is helpful for family and friends (and welfare attorneys) to know your wishes, and this can help prevent damaging family arguments about whether, for example, you would wish to be resuscitated.

With regard to my health, is a Living Will the same as a Power of Attorney?

There's often confusion over whether these are one and the same. Both provide reassurance and clarity, but they do so in very different ways.

Thus, Powers of Attorney and Living Wills are different, but they are not 'either-or'. Neither takes away the anguish of someone losing capacity, but both prevent difficult situations becoming far, far worse.

As people live longer, more of us are facing questions about what will happen when we, or our relatives, can no longer look after ourselves. Many people are already grappling with this issue.

Both Powers of Attorney and living wills, also known as 'Advance Medical Directives', are helpful to families when someone becomes seriously ill, but it's important to understand the differences between them.