

NOTARIAL ACTS DURING THE STATE OF ALARM

Following the proclamation by the Spanish government of the state of alarm in connection with the pandemic caused by COVID-19 in the Royal Decree 463/2020 of March 14, the General Directorate for Legal Security and Public Faith, in consultation with the General Council of Notaries, published on March 15 the corresponding instruction to take measures that ensure the adequate provision of the notarial public service for coping with the sanitary crisis caused by COVID-19 (hereinafter, the instruction).

Emphasizing that the notarial service is a public service and therefore the notarial offices must remain opened during the state of alarm, with the exception of the notary's illness and other statutory cases, the instruction provides for certain precautions to be taken by the notaries to minimize the risk of infection for themselves, their employees and customers. These arrangements affect both the internal organization of work in offices, such as the establishment of shift changes for employees, as well as measures that must be used for access the offices for the certification of a public document.

In the first place, the instruction defines the filter of the "urgency" of the notarial act and gives it an absolutely extraordinary character under given circumstances. It is the notary who, at the request of the interested party, must assess the urgency of the matter in each individual case. This urgency does not have to be proven particularly for transactions with credit entities.

From our offices in Bilbao, Denia, Madrid, Palma de Mallorca and Valencia we contacted several notaries to clarify which criteria they use when assessing the urgency of their actions. The notaries require the existence of an economic, personal, family or contractual cause of sufficient importance that prevents the certification of the public document from being postponed without causing serious damage. The existence of time limits is also assessed. To this end, the interested party must state the reasons in his request to the notary and provide evidence that justifies such urgency in every individual case. The notaries are obliged to keep a corresponding register and save it within 4 years for possible examination.

In this way, for example, it could be possible to certify a deed of purchase if a heavily pregnant buyer had previously sold her apartment and needs an access to the new apartment before birth to make the necessary arrangements for the newborn's arrival. However, in cases where the deadline for formalizing the public deed agreed in a private contract is within the validity period of the state of alarm, the notaries generally recommend that the parties reach an agreement to extend this deadline, unless there are other reasons that justify the urgency of the public deed. In addition, there are legally valid alternatives that do not require the notarial intervention, such as the handwritten will or will in danger of death according to Article 688 and 700 of the Spanish Civil Code respectively.

Once the urgency assessment has been made and the need for a notary act has been confirmed, the interested party is summoned to a specific date and time, not least to ensure that groups of people do not unnecessarily form within the office. Notaries also warn that people who have symptoms of COVID-19 infection, such as cough, fever or breathing difficulties, will be clearly denied access to the offices.

Due to the necessary to restrict the access to the offices, only interested parties and accompanying persons indispensable for the certification, such as interpreters of witnesses, may be consulted. These people must take measures for their own protection, for example wearing medical masks, gloves and even bringing their own pens. The certification period will not take longer than strictly necessary.

The notary warns the interested party in the same public document of the subject of certification, of the consequences for the falseness of the statements on the urgency of the matter and the sanction regime, which was laid down by the Royal Decree 463/2020.

Do not hesitate to contact us if you need a notarial certification during the state of alarm:



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