



**ROSE**  
Financial Planning

## **MAKING A WILL IS NOT AN OPTION – IT'S A MUST!**

According to one of the UK's top London probate lawyer, a half of all Britons have not made a will. And, based upon our the experience of the Rose FS advisers, it is little different here in Spain and probably worse.

The laws of inheritance and intestacy (dying without a will) in both the UK and Spain have small similarities only but both set out clear rules for what happens to your estate - property, personal possessions and cash - if you die without a will.

In the UK under the Administration of Estates Act 1925 the spouse and children do not automatically receive everything in the deceased's estate. The same applies in Spain albeit with different emphases.

There is a strict pecking order under both jurisdictions for deciding who gets what.

### **UK**

In the UK where the deceased leaves a spouse but no children, the spouse receives:

- All the personal chattels such as a car, furniture, clothes and jewellery
- A legacy of £200,000 and one half of the balance outright
- The remaining balance then passes to various relatives; first to the deceased's parents if either are still alive but if not then equally amongst brothers and sisters

Where there is a spouse and children, the spouse receives:

- All the personal chattels
- A legacy of £125,000 and the income from one half of the balance
- The rest passes to the children on reaching 18

All this can leave the spouse and the children with a financial headache, typical problems include:

- If the matrimonial home is in the deceased spouse's sole name, this may often have to be sold to satisfy the various family claims

- Where there are children they are likely to receive very little, unless the estate is worth several hundred thousand pounds
- Inheritance tax may be due if the value of the estate passing to the beneficiaries, apart from the spouse, is worth more than £285,000 (2006/2007 tax year)

Nevertheless, there is no doubt, that the surviving spouse is treated harshly by the intestacy rules.

Although at first glance it seems that children fare well under intestacy, they are guaranteed a share of the estate, the fact that they are entitled to receive their inheritance at age 16 poses all sorts of dangers. The age of 16 is very young to inherit. In contrast most wills seek to increase the age of inheritance to 21 or 25.

Where there are no children other family members have a right to benefit in the estate. This may not be such a good thing. Elderly relatives may have no need of the funds and indeed an inheritance at this stage may upset their own inheritance tax planning.

Furthermore, who is to say whether the deceased wanted such family members to benefit anyway?

Failure to make a will denies the deceased the opportunity of naming suitable people in the form of executors to administer the estate. Instead beneficiaries administer the estate of the deceased, they may not be suitable to deal with large sums of money or in some cases a business.

## **SPAIN**

Where you have a will in the UK (and you should) you can have that 'mirrored' here in Spain for the purpose of the distribution of assets here which will be subject to Spanish laws if you die intestate. But a mirrored will ensures that the distribution is as per the UK version. A special dispensation based on the 'domicile' in the UK.

However, with no will here and you are exposed with much the same sort of issues arising i.e. a strict formula for the distribution of the estate, and goodness knows what in the way of headaches. And all for a couple of hours work and a few hundred Euros to put straight.

There is one important difference between the two regimes to make mention of. Property values in the UK are based on market value which is very easy for the Inland Revenue to determine. Not so in Spain. Inheritance Tax (IHT) and its complex formula uses the escritura declared basis sometimes but more often the 'catastral' or local authority valuation. That is invariably much lower than the real market value which helps to reduce exposure somewhat.

And finally remember that the estate is formed from all assets in Spain, for example, cars, bank accounts and goods.

Now matter where you reside, it is sensible to take advice on the ownership of assets and the eventual passing of such to children and grandchildren. With a little advanced planning an awful lot of tax and, perhaps more importantly for some, pain and anguish, at a time when it is not wanted, can be avoided. Bearing in mind recent changes to taxation of savings and investments under the 2005 EU Savings Tax Directive, perhaps now is a good a time as any to have that chat with an Independent Financial Advisor.

And to make that will!

And, when you do, it's a good idea to let the children know what you have decided for, according to recent research, some 20% of arguments over wills stemmed from claims that an estate was divided unfairly and about 5% of rows occurred when someone found out they were not to receive an item apparently verbally promised to them. Best to cover that off whilst you have time I think!

Making a will is a must, not an option.

**Mark Mountney, the proprietor of Rose Financial Planning, is a specialist mortgage brokerage and Independent Financial Advisor. He is a fully qualified mortgage and financial adviser in the UK with some 10 years experience in managing his own firm. Mark was also a founder of The Association of Mortgage Intermediaries, the trade association for mortgage advisors in the UK with 20,000 members. See [www.rosefp.com](http://www.rosefp.com) or call 0034 677 874 948.**