



## DE COTTA MCKENNA & SANTAFÉ English Lawyers and Spanish Abogados

### **WILLS, WILLS & WILLS**

**by Jon Sutton, Solicitor and Registered Foreign Lawyer at  
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A will is one of those things that you know you really ought to do but continually put off. In the UK, almost 70% of the adult population does not have a will. In opinion surveys, most people agree that they should have a will but reasons given for not having one vary from not having the time to believing it is bad luck !

There are however important reasons why everyone should consider making a will. One of the major reasons is to minimise the tax payable by the estate in the UK when a death occurs. Whilst at one time, inheritance tax was something that only the very wealthy had to worry about, these days with the rapid increase in property values, a relatively large proportion of people have sufficient assets to make their estates taxable on death. A well drafted will in conjunction with the help of a financial adviser can keep the tax payable to a minimum.

Another major reason that people make a will is to ensure that the intended beneficiaries inherit their estate. Often married couples don't bother making wills due to the mistaken belief that their spouse would inherit everything if they were to die. In fact this is not the case as the law governing the distribution of the estate upon intestacy (where someone dies without a will) only provides for a proportion going to the spouse with the rest going to the children or even more distant relatives. This can lead to hardship for the surviving spouse.

Couples who live together have no rights to each other's estate and no right to organise the funeral unless there is a valid will.

Just as important for some people is who they don't want to inherit the estate such as disliked relatives or even the crown if there are no living relatives. If a person dies intestate it is the State who effectively decides who will benefit and by how much.

When resident in Spain, it is advisable to have an English form will to cover all your assets in the UK and a Spanish form will to cover all your assets here in Spain. The Spanish law will allow non-Spanish nationals to draft their Spanish will in accordance with the law in their country of origin. This means that people from England and Wales can leave their Spanish estate to whoever they want whereas a Spanish national has to comply with a strict set of rules including leaving a large proportion to any children rather than the spouse.



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An English form will has to be in writing and must have introductory words confirming that it is a will. It will appoint executors who are the people who will administer the estate upon death. A trusted friend or relative or a professional executor such as a lawyer should be named. Is advisable to name more than one executor.

The will can include gifts of specific items or sums of money to be given to certain people, these are known as legacies. The rest of the estate after the legacies have been distributed and the tax and expenses paid is known as the residuary estate and the will should state to whom this should be given. The will should then be signed and witnessed by two witnesses who themselves are not beneficiaries or married to any beneficiaries.

A more recent development is that of living wills. These are also known as advance directives. They basically are a statement of your wishes in respect of future medical treatment. They become useful if you become unable to communicate for example after a stroke or a coma after an accident. It allows you to state in advance what forms of medical treatment you would or would not like to be carried out in the future. This can include the refusal of some or all forms of medical treatment.

Whilst at the current time, living wills do not have legal standing in the UK, they can be taken into account by the medical practitioners. Also legislation is being proposed which will give legal effect to living wills.

A good example of a situation where a living will, could provide assistance to the relatives of an incapacitated person is the recent tragic case of Terri Schiavo. This lady, a resident of the United States sadly died last month after her feeding tube was removed.

This followed weeks of protracted legal argument and quarrelling between her husband and her parents as to whether the life support should be continued or whether she should have been allowed to pass away in peace.

A legally valid advance directive could prevent all the wrangling and allow the person themselves to have the last say regarding their treatment. This would appear to be in everybody's interest.

If you have assets in Spain, the UK and offshore I would strongly recommend that you have your wills reviewed.



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