Estate Planning – An Investment

Introduction

Arguably, your will is the single most important document you will sign during your life. A brief look through the shelves of this firm's legal library will reveal a large number of books devoted to the subject, and further reading will reveal that the Courts of Chancery have dealt with cases of intestacy or inadequately drafted wills since their earliest days. We therefore advise a regular review of your testamentary arrangements.

We take Estate Planning seriously. So should our clients. Neither of us can afford to do otherwise. This is partly for our own protection as we do not want to be sued by disgruntled beneficiaries of your estate or (possibly) potential beneficiaries who might have benefited but for the delay. But mainly for your own protection, as you do not want to leave your affairs in such a state as would create confusion and possibly disputes after your death.

Disposal of your property in accordance with your wishes

Many people erroneously believe that the intestacy rules will provide for their family or next of kin as they would have done. This is not necessarily the case. For instance, since the change to the intestacy rules in 2014, (which apply to deaths on or after 1 October 2014), on the death of a married man with a wife and children, his personal belongings and £250,000 will pass to his wife and the remainder of his estate will be divided in half with one half passing to his wife and the remaining half being shared equally between his children. This could result in the family home having to be sold in order to divide the proceeds. Subject to the value of his assets there may be an inheritance tax liability on the value of assets passing to the children which could have been avoided with relatively straightforward testamentary planning.

Similarly, a person may wish to benefit certain people or objects such as charities, godchildren, friends, employees and the intestacy rules do not provide for this.

Expense

Failing to plan for your succession can cause a great deal of unnecessary expense to your estate. Who is to administer your estate? Is it possible to trace next of kin? Who has power to deal with certain pressing matters, such as security for your assets, insurance etc? If your affairs are in order however, the business of administration can start promptly, without any of the delays which cause hardship to those left behind.

Capital Taxation

Inheritance tax, at present at its lowest rate for many decades, can nevertheless be charged at 40% on a proportion of a person's assets at death. This may necessitate a sale of just under half of your estate, leaving proportionately less for your next of kin, and a windfall for the Treasury.

If your main asset is a house, a forced sale to pay inheritance tax could produce many unwanted and unforeseen results, at a time when they are least convenient.

Although we cannot claim to remove the tax problem altogether, we do have considerable experience in planning for it, and with careful thought the burden can be reduced in a great number of cases. Savings of tens of thousands of pounds are not uncommon, but correctly drafted documents are essential for these purposes.

Legislation was introduced by the Finance Act 2012 to provide for a lower rate of inheritance tax of 36% if a certain proportion of an estate is left to charity. For further information about this please see the example included in the Appendix at the end of this note.

Guardians

For those with infant children, material considerations are not the only reasons for considering estate planning. The welfare of small children will be of paramount importance to a testator, especially in the unfortunate event of an accident involving both parents.

It is essential to consider carefully who should take over parental responsibilities (for upbringing, schooling, and religious matters), and to make legal appointments to avoid any confusion or dispute after a death.

Executors

The persons appointed to execute your will (and manage any related trusts) are of great importance. They must be business-like, efficient, but also sympathetic to the needs of the beneficiaries. They should be energetic, and committed, either through friendship with the testator (or his beneficiaries) or because they are professionals paid for their knowledge and experience. They should be specialists in this area.

It should not be forgotten that executors will often become trustees (if the will and circumstances create continuing trusts), and trusteeship can be a long-held office, demanding both integrity and a continuing knowledge of the evolving law of trusts and taxation.

You may wish to consider leaving a legacy to your lay executors unless they are already beneficiaries of your will.

Creation of Special Testamentary Trusts

Trusts will arise automatically if assets are left to young children. However, we are very often asked to advise on specially tailored trusts for given situations – for instance the disabled child, the profligate nephew, the financially naïve beneficiary, and lastly for tax-saving schemes. These require care, flexibility, and an up-to-date knowledge of the fiscal rules of trusts. We have this knowledge, being responsible for hundreds of different trusts, of all sizes, and terms. Following the inheritance tax changes for will trusts introduced by the Finance Act 2006 special care is now needed in this area.

Disputes

Arguments arise after a death for a variety of reasons. It may be alleged that the author of the will had insufficient mental capacity; or that he did not benefit someone he ought to have benefited; or that the will itself was in some way defective. Whatever the reason, these disputes can be very costly, both in human and financial terms. They will also delay the administration of the estate, to the detriment of those properly entitled.

Estate Planning Steps

Consider very carefully your assets (and other financial interests, such as insurance and pension rights, trust interests, expected inheritances etc), and then take steps to ensure that they pass effectively in the event of your death. This may involve any or all of the following:

- Making a valid will.
- Changing the way in which joint property is owned.
- Writing insurance policies in trust for your beneficiaries.
- Nominating beneficiaries for your pension or death-in-service benefits.
- Exercising powers of appointment you may have under trusts created by other people.

"Nil Rate Band" Management and the Finance Act 2008.

The "nil rate band" threshold provides a zero-rated allowance for a person's assets so that (broadly) the first part of a person's estate up to the "nil rate band" is taxed at 0% (no tax to pay) and the remainder of the estate is taxed at 40%.

This allowance is sometimes unused on the first death of a married couple because the whole of the estate passes to the survivor tax free because of the spouse exemption.

In the Finance Act 2008, the Government legislated to allow the unused allowance of the first person to die to be carried forward and made available on the death of the surviving spouse - thus potentially taxing up to £650,000 at 0%.

In addition, if a widow or widower remarries, the unused allowance of either the first or second to die can be carried forward to be used by the survivor be it the original widow or widower who has survived more than one spouse, or the widow or widower's surviving second spouse. Thus in certain cases up to £975,000 could be removed from the IHT net by careful planning; without such planning, benefit may either be wasted, or allocated to beneficiaries in a manner not intended by the parties!

Although the surviving spouse must die after 8 October 2007 to take advantage of these proposals, there is no time limit for the occurrence of the first death(s), so this is a backdated concession.

The implications of the Finance Act 2008 need to be very carefully considered, in particular by testators who are married or in a civil partnership, and widows or widowers.

Our charges

While giving a professional service, we also aim to provide all the back up of a modern business, and our charges therefore reflect both these overheads and our time and expertise.

The time we spend usually breaks down as follows:

- **Initial contact with client to discuss needs and wishes, and to ascertain fully the extent of assets and interests (1/2 hour).**
- **Meetings – these are vital to the process of due diligence and best advice and we would not usually make a will without at least one. Taking into account preparation, conducting and completing a meeting, professional time of about 3 hours is usually spent.**
- **Paperwork – recording instructions, details of assets, inheritance tax calculations etc (2-3 hours).**
- **Investigation of any important documentation affecting the testator's wishes (time variable).**
- **Drafting the will and any related trust documents (1 hour).**
- **Checking documents and writing the letter of explanation (1/2 hour).**
- **Receiving replies and comments – preparing fair copy of documents for signature. Advising on formalities of execution (1/2 hour).**
- **Receiving signed will; checking formalities are properly complied with; photocopying for file and client; storing original in fireproof strongroom, entry of details onto database (1/2 hour).**
- **Total time spent could be 8-9 hours. You should therefore budget for this in your planning. There will always be a strong element of Partner time. Charges of between £2,000 and £3,000 + VAT for a thorough estate planning review are therefore not unusual and for larger more complicated estates, costs can sometimes rise in excess of that.**

Changes to your will

If you change your mind – or your circumstances change – you may also change your will. If you make a later will, the original one, including any codicil, is automatically revoked.

If you marry or enter into a Civil Partnership after making a will, it will usually be revoked automatically and entirely. The exception to this would be if the will states that it was made "in expectation of marriage" to the person later married.

If you divorce after making a will, the appointment of your former spouse as executor will be nullified when the will takes effect; similarly any gift to your previous spouse lapses, unless a contrary intention is shown by the will. Nevertheless, it would be advisable to review your will immediately in the event of separation.

At any time you can always amend your wishes. This might arise from the birth of further children or grandchildren, excluding somebody from your will, or else leaving a legacy to a charity or some other good cause. For this you may not need to make a new will. A simple codicil may suffice. As with the original will the codicil must be signed by you and witnessed appropriately, though the witnesses do not have to be the same as for the original document.

Conclusion

If you would like to use our services to plan your estate, you will find that we also arrange as follows:

- To provide storage in our fireproof strongroom for your will, and any related documents, provided you undertake to keep us informed of all changes of address, or other material changes in your circumstances which would invalidate the document we hold on your behalf.

- If a partner of this firm is appointed executor or co-executor we shall write to you in the event of his death or retirement and undertake to prepare a codicil at no charge appointing a substitute of your choice in such a case.

You will be sent a questionnaire which should be completed as fully as possible before any further steps are taken. The questions are designed to enable us to advise you fully on the devolution of your estate. They are not intended to be definitive, nor to exclude the possibility of a personal appointment, which is nearly always essential.

APPENDIX

The effect of giving 10% of your estate to charity

In 2012 legislation was introduced to lower the inheritance tax ("IHT") rate for a person that leaves 10% or more of their estate to charity.

The reduced rate is 36% as opposed to the general rate of 40%.

It is important to note that as well as lowering the overall tax rate on the non-charitable gifts made under the terms of the will, gifts made to charity will be exempt from IHT.

Whilst the concept is a simple one, the legislation and rules are unfortunately more complex. It is, therefore, simplest to demonstrate the effects by way of an example:

George has a net estate of £1,000,000.

He has not made any lifetime gifts and, therefore, his full Nil Rate Band of £325,000 is still available (i.e. the first £325,000 will not be subject to IHT).

George would like to leave most of his estate to his children, which would result in £675,000 ("the Baseline Amount") of his estate being subject to IHT at a rate of 40%.

He is also considering whether to include some charitable legacies in his will. At present his intended legacies amount to around £40,500 (6% of the Baseline Amount).

He would like to know whether gifting 10% of his estate, to take advantage of the lower rate of IHT, would reduce what his children will receive.

The table below details the varying costs to the estate if George were to make charitable legacies of 4%, 6%, and 10% of the Baseline Amount.

	Percentage of estate to charity		
	4	6	10
Total of legacies to charity	*£27,000*	*£40,500*	*£67,500*
IHT payable on the estate	*£259,200*	*£253,800*	*£218,700*
Total sum to non-charity beneficiaries	*£713,800*	*£705,700*	*£713,800*

As shown in the above example, the cost to George's children of a 10% legacy to charity is in fact the same as the cost of a 4% legacy and, importantly, it would be more advantageous to George's children if he gives 10% of the baseline amount to charity as opposed to an amount between 4% and 10%.

More information about the 36% reduced rate for IHT is in our Briefing Note: Charitable Giving.

For further information, please contact:

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