

## Using Your Will to Manage Family Problems

Until quite recently, many people wrote Wills only for fear of otherwise paying more inheritance tax (IHT) than was strictly necessary. This was because, until the introduction of recent legislation, a married couple could only take the benefit of two tax-free allowances (or Nil Rate Bands) on death if their Wills were specifically written so as to achieve this. If you did not use the allowance on first death, you lost it. As simple as that!

However, the Chancellor was accused of stealing the Tories' thunder in October 2007 by introducing the notion of the transferable Nil Rate Band (but without actually increasing the amount of the allowance). It was, in spite of the fact that there was no real gain for all those people who had written their Wills properly, a headline winner. Under the new regime, all you have to do on the death of the first spouse is to ensure that the survivor inherits everything and your family will still qualify for the double tax allowance on second death – crucially, calculated with reference to the Nil Rate Band at the time of second death. Hence, if a couple die several years apart, there could be a real benefit in deferring using the Nil Rate Band of the first until the survivor also dies.

But does this mean that complex Will planning is a thing of the past?

Not if you want to ensure that the family wealth is maintained, rather than being diminished as a result of divorce, separation or reckless spending.

Having dealt with many apparently sensible and united families, only to discover (usually following the death of one or both of the parents!) that things are not always what they seem, I would suggest that there are still plenty of good reasons for looking at estate planning as more than just a tax-saving exercise. In our increasingly complex society,

matrimonial breakdown and financial pressures are more prevalent than ever before and it is these issues (rather than tax concerns) which now commonly drive estate planning.

It is not at all uncommon in a "normal" family (whatever that is!) today to find a maelstrom of family problems (unhappy marriages and/or difficult/irresponsible children), financial problems (businesses in trouble, unemployment and the like) and health difficulties (elderly and infirm spouses or children with disabilities). The traditional "simple" solution, therefore, of a couple leaving everything to each other failing which the children may therefore be completely inappropriate in many cases. Rather, there are significant issues of control and protection which should be addressed so that the family ends up with the best possible outcome and the scope for disharmony (and worse) is reduced.

This is where trust arrangements may well have their place as a properly thought out and well drafted Will should come into its own when the problems start to creep out of the woodwork

It may seem obvious, but it would (to most people at least) be total madness to leave a substantial inheritance to someone who is incapable of dealing with money responsibly (whether because of disability or simply ineptitude!) without some degree of control being imposed. A trust arrangement, however, whereby someone else (-the trustees, chosen by the person writing the Will) decides how best to deal with things having mind to all the circumstances, can avoid all sorts of problems.

Similarly, there may be very good reasons in the case of a second marriage to put trust structures in place to ensure that the family of the earlier marriage ultimately receive what they are intended to have (but might never get if it is left to the surviving step-parent who, may, after all, have a completely different agenda).

Whilst the mere mention of Trusts is enough to send many intelligent clients into a cold sweat, generally because of the perceived complexity and expense of such arrangements, they really do not need to be a headache and should be a real boon in the longer term provided they are entered into with the benefit of good advice. Well thought out and

carefully crafted trust arrangements can bring a great deal to the party (especially in terms of family harmony) and should not be dismissed lightly. Whilst the cost of setting up trust structures in the first place may seem unnecessary, the potential savings can be very significant indeed – not least if an apparently "simple" Will leads to a long and costly dispute downstream.

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