

FREQUENTLY ASKED QUESTIONS: TAX PLANNING, WILLS, PROBATE & TRUSTS

If I don't have a will, what will happen to my house and my other assets when I die?

Your estate will be distributed under the 'intestacy rules', and these can produce surprising results. For example, your spouse or civil partner may not be entitled to all of your assets. If you are not married or in a civil partnership and are cohabiting with a partner, he or she will not be entitled as of right to any part of your estate, which would pass instead to your next of kin under the intestacy rules.

Do I need to make a new will if I get married?

Yes – unless your existing will states that it was made in contemplation of this marriage.

Do I need to make a new will if I am divorcing?

Yes. Until the divorce is finalised, your spouse may be the main beneficiary under your current will. Once the divorce is finalised, your will remains valid, although any provisions relating to your former spouse will no longer apply, and the terms which will apply instead may no longer be appropriate to your new circumstances.

How can I avoid inheritance tax having to be paid on my estate after I die?

It is not always possible to avoid inheritance tax altogether, but it can often be mitigated. Unfortunately, this usually involves giving assets away during your lifetime or, if you are married, giving assets away to someone other than your spouse on first death. This can be done without adversely affecting the surviving spouse's financial security by the use of appropriate trusts. There are also more complex strategies that may be appropriate for you and we will happily discuss these with you if necessary.

If you would like further information about inheritance tax, please contact us and ask for our 'Inheritance Tax Planning' leaflet

Can I make a gift of my house during my lifetime and save tax when I die?

Using your home for inheritance tax planning should always be a last resort – it can be risky, and indeed it can be a very complex and expensive task because of the rules about 'reservation of benefit'. However, so long as the risks have been fully explained and understood, there are schemes available.

Can I put some of my money into accounts in the names of my children so that they can use their personal income tax allowances?

No, unless your children are married or over the age of 18. A parent who gives money to a minor child is personally liable for tax on any income earned on that money. However, such gifts can still be of benefit in certain situations. Furthermore, the rules are different if the gift is made by a grandparent where the arrangements can be much more tax efficient.

Can I make gifts to my children or grandchildren but still keep control?

Yes – by making the gift to a trust for their benefit, rather than an outright gift to them. You can appoint yourself as one of the trustees who will have control over the trust assets. A trust may be appropriate where the intended beneficiaries are young, or where you want to retain control over the sale or otherwise of a particular asset, for example a piece of land, or shares in a family company.

Can I appoint someone to deal with my financial affairs if I become ill in the future?

Yes – by using a power of attorney. However the use of such documents must be considered very carefully – including the choice of your attorney, and whether his or her powers under the document should be restricted.

How can I prevent my house being sold to pay nursing home fees?

This is a very thorny issue. There are many circumstances in which your home is protected by legislation against being sold to fund nursing care and careful guidance is required. Similarly, we can advise on issues concerning the liability for funding long term care where disputes arise between the family and the local authority, or in respect of NHS funded care. The use of trusts to protect assets is often suggested, but often this approach is not appropriate and, again, careful and expert guidance is called for.

Further information

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