



Why have a Will?

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Speakers

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Rules of intestacy

Examples:

Rules of intestacy

Married person with children

- Spouse gets first £250,000 and personal possessions
- Remainder is divided into two:-
 - Half to the children at 18 or earlier marriage
 - Half in trust during spouse's lifetime – spouse receives the income. (On spouse's death this half goes to the children)

Rules of intestacy

Married person, no children

- Spouse gets everything up to £450,000 and personal possessions
- Anything remaining is divided into two:-
- Half of this goes to spouse, half to parents. If no parent is living then it goes to brothers and sisters or their children

Rules of intestacy

Unmarried person with no children

- Estate goes to parents
- If none, then to siblings of the whole blood or their issue

Points at which to write/review a Will

- Marriage - makes previous Will void
- Birth of children - appoint guardians
- Children grown up
- Having made lifetime gifts
- Divorce
- Retirement
- In receipt of an inheritance

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Drafting a Will

- Take inheritance tax advice from a tax adviser/accountant
- Use a qualified solicitor for drafting

Tax planning – initial stages

Lifetime gifts

- Gifts out of income
- Annual exemptions £3,000 pa
- Small gifts <£250 per person pa

Keep records

Tax planning

Lifetime gifts (PET)

- Taxable within 7 years of death if they exceed NRB
- Watch capital gains tax implications on gifts other than cash
- IHT on failed PET responsibility of beneficiary but ultimate responsibility lies with executor if unpaid
- Could protect with life cover on donor
- Deed of gift could cover prior agreement on who will bear the tax
- Avoid gifts with reservation of benefit – e.g. give away holiday house but donor continues to use it free several weeks a year

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Review all assets and be sure how they are held

- Sole owner
- Joint owner – tenant in common or joint tenant
- Partnership property
- Legal charges/ mortgages

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Executors

- Will starts by appointing executors
- Who to choose – family or friends
- Professional executors
- Or mix of both
- Biased advice – your accountant will be a good choice!

Duty of executors

- Collect and safeguard assets
- Pay the debts of the deceased – inc IHT
- Distribute the estate to the beneficiaries

On first death

- Leave assets to surviving spouse – exempt for IHT
- Or to an Interest in Possession Trust (IPDI) for surviving spouse

IPDI

- If survivor remarries protects assets for deceased's children
- Capital value not part of estate for care purposes
- If second marriage can protect eventual direction of assets say to children of first marriage

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Assets to consider

- Chattels
- Family home
- Sufficient capital/income for survivor

Nil rate band (NRB)

- £325,000 of assets gifted on death or within the previous 7 years are tax free
- If NRB not or partly utilised on first death – balance to second estate on % basis
- May have multiple NRB
- Need evidence pack especially for deaths since October 2007

Specific legacies

- A bequest of a particular thing e.g. a piece of jewellery, a specific horse, a sum of money, a particular property
- Unless specified in the Will the IHT on these gifts is paid by the remainder of the estate

Specific legacies

Pitfalls

1. Assets no longer exist e.g. sold before death
 - Result – beneficiary loses out
2. Assets have large tax burden
 - Paying tax uses up residuary estate

Specific legacies

Planning Points

- Specify that gifts are made subject to tax
e.g. holiday cottage recipient pay % of tax arising on that property
- Include 100% APR/BPR assets as specific gifts

Residuary legacy

- Will states how the balance of the estate is to be divided e.g. to my siblings/ children equally.

It is as well to name them

- Farmers – watch SFP, could fall into this bracket unless mentioned elsewhere

Reliefs and planning

- Agricultural Property Relief
- Business Property Relief
- Planning

Agricultural assets

- Agricultural Property Relief
- Applies to **the Agricultural Value** of agricultural land and buildings including farm cottages and farm houses
- HMRC aggressive especially regarding farmhouses
- Planning important to demonstrate active farming

Agricultural Property Relief

- Rates of APR
 - 100% or 50%
- Applies to property owned and farmed personally for 2 years, or
- Owned for 7 years and farmed by another
- Preservation of APR needs active consideration
- Beware of income driven changes of use

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Reliefs and planning

Jean-Paul will take you through the other reliefs available and an example estate to show how tax can be reduced by Will planning.

Business Property Relief

Rates of BPR

- Sole trade = 100%
- Partnership assets = 100%
- Property or P&M used by partnership in which you have control = 50%
- Shares in company = 100%
- 2 year ownership period

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Business assets – Planning points

- If you own an asset, which is utilised by a partnership, consider making it a partnership asset
- If used by a company need to have controlling shareholding
- Control achieved by taking into account holding of spouse
- A casting vote gives control in 50:50 situation (share holders agreement to document)
- Shareholdings – underlying assets must be qualifying e.g. not large cash reserves or residential property
- Assets need to have been owned and used for 2 years in the business and be in use at date of death

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Example of Will planning

Example

- Estate of Mr X deceased, leaves wife and 2 adult children
- Family home £370,000
- Chattels £20,000
- Holiday cottage £260,000
- Savings £700,000
- Farm land let on FBT £500,000 – 100% APR
- Family business £200,000 – 100% BPR

- Total Estate = £2,050,000

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Possible IHT

- Total estate : £2,050,000
- Estate after APR/BPR : £1,350,000
- All assets left to surviving spouse, which is an exempt transfer and therefore no tax
- On Second Death (Mrs X), assets pass to children, after allowing for APR/BPR (and two Nil Rate Bands) total IHT of £280,000

IHT could be even higher

- If family business and farm land sold between first and second death
- No APR/BPR on estate of £2,050,000
- IHT payable of £560,000

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Planning point 1

Using a discretionary trust to protect BPR/APR relief

- Can preserve APR/BPR if might sell between 1st and 2nd death, by Mr X leaving the farm land and family business to a discretionary trust
- Mrs X can be a beneficiary of the trust
- This crystallises the business property relief and even if the land/business is sold in between first and second death there is no additional IHT as it falls outside Mrs X's estate
- Compared to original Will this saves £280,000

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Planning point 2

“Double Dip”

- Even if not planning on selling the farm land/family business we can still improve the position
- “Double-Dipping” possible for APR and BPR assets
- Will pass farm land and family business to children or Discretionary Trust
- Spouse purchases asset back using cash so that the children/The Discretionary Trust has the cash
- In our example reduces IHT on Mrs X’s death to NIL. Again, a saving of £280,000

Other “improvements” to IHT planning

- Discounted Gift Bonds (70s)
- Replace cash with BPR assets - hold 2 years
- Lifetime gifts (survive 7 years)
- Joint occupation and gift of % of house to resident carer

Preserving reliefs

- Don't retire elderly partners
- Convert loans to a business in to capital accounts/redeemable preference shares
- Delay business sale if owner ill
- Avoid binding contracts for sale in partnership and shareholders agreements

Deathbed Planning

- Change investment company to a trading company?
- If held shares at least 2 years, consider transferring assets to trading company for use in its trade
- Consider repayment of trade debts using cash (particularly useful for sole traders)
- Use normal exemptions
- Transfer assets with significant capital gain to sick spouse

Post death planning

- Deed of variation within 2 years of death - need consent of all beneficiaries
- Sell quoted shares at a loss within 12 months
- Sell land at a loss within 3 years

Summary

- Make a Will
- Review it at least every 10 years
- Reconsider the options following life changes
- Come and talk to us about Wills, IHT planning and trusts



Questions?

Mary Jane Campbell

Jean-Paul Quertier

Or come and talk to us individually
whilst enjoying the buffet.

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