the Word

Woodfines Solicitors' newsletter for individuals

Summer Newsletter 2017 | Issue 19

How the Residence Nil-rate Band will help families facing mounting Inheritance Tax

Inheritance Tax (IHT) bills have rocketed to their highest-ever level, with HMRC collecting £5.1bn in the past year, according to its latest figures. The number of estates paying IHT leapt by 15 per cent last year alone, and has almost doubled in the last eight years.

With property values continuing to rise, many families are concerned that their estates will be liable to IHT at 40 per cent. Luckily, there is some good news. Changes that were introduced earlier this year should help bring down the IHT bill for many families.

April 2017 saw the introduction of a new residence nil-rate band (RNRB), commonly referred to as the 'family home allowance', that is available in addition to an individual's own nil-rate band of £325,000. It covers the main residence when it is passed to descendants. It was introduced in 2015 by former Chancellor, George Osborne, in an effort to reduce the mounting IHT burden faced by ordinary families. At the time, it gave rise to headlines suggesting that everyone could leave a tax-free legacy of £1m, however, that isn't the case yet and won't be until the changes are fully implemented in 2020, and even then, the changes won't benefit everyone.

The main groups that will lose out are unmarried couples and those without children as the RNRB will only apply if you pass your main residence to a child or grandchild (this includes stepchildren, adopted children and foster children, the spouse or civil partner of a direct descendant, or a spouse or civil partner, if not remarried at the time of the deceased's death). It's important to note that only direct descendants can benefit, and that doesn't include nieces and nephews, for example. So not everyone will be able to rely on the RNRB for IHT planning purposes.

For example, recent research from a major insurer shows that one in ten over 55s has a will in place that leaves their estate including a property to a sibling, this would disqualify them from using the RNRB.

Implementation

The allowance is being introduced in stages over four years, with a limit of £100,000 for the 2017-18 tax year, rising by £25,000 a year to reach £175,000 per person in 2020. This is in addition to the individual allowance for IHT which has remained unchanged for several years at £325,000 (and won't be reviewed until the end of the 2020-21 tax year), while property prices have forged ahead.

Stephen Patch, Partner

How the RNRB works

Once the changes are fully implemented, they will mean that each parent will be able to leave £500,000 in assets that includes a 'family home' component of £175,000. As it can be passed from one partner to another on death, when the first partner dies their allowance can be transferred to the surviving partner, meaning that the surviving spouse will have an allowance of £1 million.

However, it's important to be aware that the RNRB is restricted to the value of the property. For example, married couples will have a joint RNRB of £350k by 2020, but if the matrimonial home is worth only £275k then that is the maximum RNRB available (i.e. the remaining RNRB of £75k is lost).

In addition, the RNRB depends on the value of the estate including the property, meaning that if an estate were to include a property worth £400,000 but also a business valued at £5m, then the RNRB wouldn't be available.

Where an estate is worth over £2 million, the family home allowance (but not the individual allowance of £325,000) reduces by £1 for every £2 of value above £2 million.

Only one residential property qualifies for the relief, but it is possible to nominate which property is to qualify if there is more than one in the estate. Properties that have never been lived in, such as buy-to-let properties, do not qualify.

What happens if you move out of the property

The family home doesn't need to be owned on death to qualify. This is a help to those who may have downsized, or sold their property to move into residential care, or moved to live with a relative. The RNRB will still be available if the property disposed of was owned by the individual and would have qualified for the RNRB had the individual retained it, and if the replacement property or assets form part of the estate passed to the descendants.

To qualify, the downsizing or the disposal of the property must have taken place after 8 July 2015. There is no time limit on the period between the disposal and the date of death.

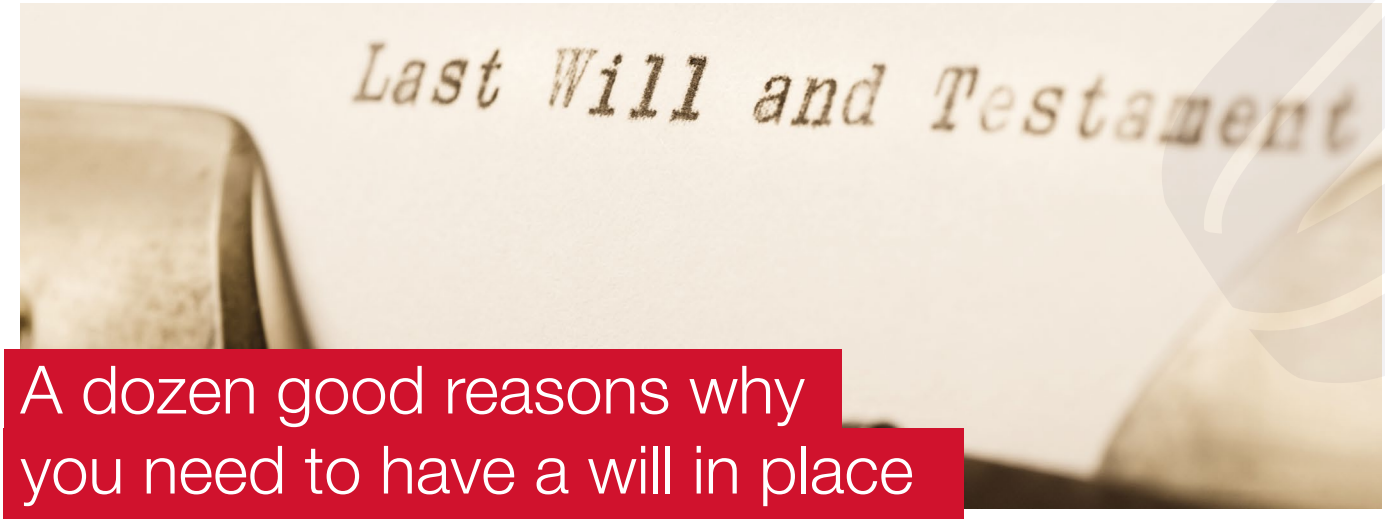
Why you might need to review your will

It makes good sense to review the terms of your will. The RNRB may be lost if the main residence is placed into a Discretionary Will Trust for the benefit of children or grandchildren. With a Discretionary Trust, a trustee is appointed to distribute the deceased's assets to a group of beneficiaries as they see fit. As none of them has an absolute right to the property, there is a potential loss of the RNRB because the qualifying conditions won't be met.

Why you might need to review your will

The rules surrounding the operation of the RNRB and IHT planning are complex, so if your family looks set to face a liability to IHT, then we can offer advice to ensure you pass your assets onto your heirs as tax-efficiently as possible. We can also advise you on how you can give your assets away tax-effectively during your lifetime, so that they don't form part of your estate when you die.

If you'd like to discuss how IHT could affect the amount you leave to your heirs, then please call Stephen Patch on 01767 684341.



A dozen good reasons why you need to have a will in place

If you haven't made your will yet, you aren't alone. Surveys show that around two-thirds of the adult population in the UK have yet to put this important document in place. Each year, around 300,000 people die without having made a will, almost 60 per cent of the annual total. Making a will isn't time-consuming or costly, but not having one in place means that your family may suffer unnecessary financial hardship, delays and added distress when you die.

It puts you in control

If you care about who gets your money and possessions after your death, and most of us do, then writing a will enables you to stipulate who inherits your assets and how much they should receive. With a will in place they will be able to gain access to their inheritance more quickly too.

In a will, you can leave money to your unmarried life partner, or allow your spouse to keep living in your home, or ensure that an estranged husband or wife doesn't inherit if you don't want them to – all things that might not automatically happen if there's no will in place.

You can specify your funeral arrangements

Writing a will gives you the opportunity to make known your wishes for your funeral. You can stipulate whether you wish to be buried or cremated, say where you want the funeral to take place, and mention any special hymns or readings that you'd like to be included in the service.

You can choose who administers your estate

You can choose someone you trust to act as your Executor and carry out your instructions on your death. You can appoint more than one Executor; many people opt for a family member and sometimes a professional adviser, such as their solicitor, to provide the specialist legal knowledge needed, particularly if there may be an ongoing trust created by your will.

It helps avoid disputes amongst relatives

Writing your will is a good opportunity to discuss your intentions with your family ahead of time. That way, you can avoid the shock and anger that they might experience if they did not receive what they expected to due to the application of the intestacy rules (which would apply if you left no will) or because you made provisions in your will which they did not expect.

Esther Marchant, Partner

You can make provision for your children

You can leave money outright to your children or grandchildren in your will, equally you can set up a trust that allows them to inherit larger sums once they reach a certain age. You can also appoint one or more Guardians to look after your children if they are orphaned before reaching the age of 18.

If you've remarried you can provide for all your children

If you have stepchildren or children from a previous relationship, you can make provision for all of them in your will. The intestacy rules do not cover stepfamilies unless the parent who died had formally adopted the children, meaning they would receive nothing.

You can protect your business

If you hold shares in a business, you can specify who should inherit them in your will. If there is no will in place, then the person who inherits may not be person you would have chosen. This could have an impact on the running and future success of the business.

You may disinherit your children

The recent Judgment in the case of Ilott v Mitson means that adult children are less likely to be able to make a successful claim against a parent's estate if they are disinherited. Our advice would always be that if you intend to leave a child or children out of your will, you should talk to them and make your reasons clear and leave a comprehensive note with your will showing your reasons.

You're able to remember friends and benefit charities

You can leave money or valuables to the people or organisations of your choice. Any charitable donations you make in your will are free from Inheritance Tax.

You create problems for your family if you die intestate

Under the laws of intestacy, the estate of anyone who dies without a will who is in a marriage or civil partnership where there are no children, passes entirely to the surviving spouse or civil partner, and other relatives will receive nothing.

If the spouse or civil partner dies without a will and there are children of that relationship, a surviving spouse or civil partner will receive up to £250,000, and half of the balance absolutely, with the rest being held in trust until the children are 18, when it will be divided equally between them.

This means that parents, brothers, sisters, nieces and nephews may inherit under the rules, but it will depend on whether there are closer surviving relatives or a spouse still living, and on the value of your estate.

You can arrange things tax-efficiently

Making a will helps to ensure that your estate pays as little Inheritance Tax (IHT) as possible. In the 2017 -18 tax year, you can leave an estate valued at up to £325,000 plus the new 'main residence' band of £100,000. Anything above that amount is taxed at 40 per cent (or 36 per cent if you leave at least 10 per cent to a charity). However, there are ways of reducing the tax, including putting assets into trust and making use of your annual tax-free allowances.

Finally, because it makes a difficult time less difficult

By not having a valid will in place you would inevitably cause problems for those you leave behind. They would need to go through the courts to gain the power to deal with your estate. Making your will is by comparison straightforward and simple.

For advice on making your will, please contact Esther Marchant on 01234 270600.

Why you should consider a Health and Welfare LPA

Whilst no one would want to think about losing mental capacity, recent statistics make stark reading. They show that someone develops dementia every three minutes. One in five people over 85 already have it. By 2025, the Alzheimer's Society predicts that more than 1 million people in the UK will suffer from dementia. In addition, many people lose their faculties through illnesses like stroke, or following an accident. With awareness of dementia and Alzheimer's improving, more people than ever are planning for a time when they might not be able to handle their own affairs, or deal with important decisions about their care.

Whilst many are aware that they can make provisions for someone, referred to as their Attorney, to look after their money by writing a Lasting Power of Attorney (LPA) for their financial affairs, it can be equally important to consider making an LPA to cover your health and welfare needs too, not least because of what is frequently referred to by the media as the UK's 'Care Crisis'. Government statistics show that there are now over two million LPAs in place, and over 2,000 applications arrive every working day for registration at the Office of the Public Guardian.

How LPAs can help

It's important to realise that if you write a Health and Welfare LPA, your nominated trusted friend or relative can only take control of decisions if you lose mental capacity. So, in many respects it acts like an insurance policy, should the worst happen. All the time you have mental capacity, no one can make these decisions for you.

The crucial point to remember is that you need to set up your LPA while you are still mentally capable of doing so. If you become mentally incapacitated later in life, and don't have an LPA in place, then your relatives would have to apply to the Court of Protection to be able to act on your behalf. Unsurprisingly, many people in their 40s are now putting LPAs in place as well as writing their wills as a safeguard for the future.

Creating an LPA also provides an opportunity to discuss with your family what you would like to happen if you became incapacitated, and gives you the reassurance of knowing that you've made your wishes known and put contingency plans in place. It can often be the case that when illness strikes people can lose their mental faculties very quickly, so having one or more Attorneys appointed who can step in and deal with decisions about your medical and welfare needs provides welcome peace of mind.

Why a Health and Welfare LPA may be appropriate

Your Attorney can make sure that decisions about a wide variety of issues such as where you live, what care you receive, what you eat, what you wear are in accordance with your wishes.

Nigel Ashton, Partner

If you know that your physical or mental health is likely to deteriorate, then an LPA gives you the comfort of knowing that someone you know and trust will have the authority to express your wishes about your continuing treatment or palliative care if you become incapable of doing so yourself. This includes consenting to or refusing life-sustaining treatment on your behalf.

An LPA can save your family members the upset and frustration of not being able to be involved in key decisions relating to your comfort and wellbeing. The provision of appropriate care is one of the main reasons people give for setting up a Health and Welfare LPA; they want their family, rather than complete strangers such as local authority staff and medical professionals, to be able to step in and make the right choices for them.

What happens if there's no LPA in place

If decisions need to be taken about life-sustaining treatment and there's no LPA in place, only your legal next of kin would be consulted. This could mean, for instance, that you are resuscitated against your wishes.

If decisions need to be made about your welfare because you've lost mental capacity, then carers, social workers and medical professionals would make decisions they believe to be in your best interests. Social Services could, for example, make decisions about where you should live which your family might disagree with.

Without an LPA, to be able to take these important decisions on your behalf your Attorney(s) would have to apply for a Deputyship Order. However, it's important to be aware that Health and Welfare Deputy Orders are granted sparingly with many applications being rejected by the Court of Protection. In the absence of an LPA, all major decisions can only be taken by the Court, including withdrawal of artificial nutrition and hydration.

How we can help

Creating an LPA is a straightforward step that's not time consuming, and more and more families are putting them in place. We can advise you on the points you need to consider when making an LPA, talk you through the procedure, offer advice on how to choose an Attorney, outline the certification and witness process, talk you through the paperwork required, and help you complete the registration process with the Office of the Public Guardian.

If you're thinking about making a Health and Welfare LPA, then contact Nigel Ashton on 01767 680251.

Wills: the difference between unfair and invalid

Despite the rising cost of litigation, the number of probate and inheritance disputes brought to the High Court has jumped eight-fold in ten years, with many more ending up in the County Court.

The two reasons generally given for this rise are two-fold. Firstly, the increase in estate values, mostly due to the rise in property prices. Secondly, the increase in blended families, i.e. the increasing prevalence of second marriages and stepchildren, and the correlating decline in the 'nuclear' family.

When disputes arise, opposing parties typically claim that there was undue pressure placed on the deceased when he or she wrote their will, or that he or she did not have 'mental capacity' at the time.

Testamentary freedom

In England and Wales, we have complete testamentary freedom. This means that we can dispose of our estate by way of a valid will as we see fit, including to unmarried partners and charities. If we wish to, we can disinherit family members. This is in marked contrast to some of our European neighbours who operate systems of 'forced heirship' often requiring spouses and children to be provided for.

To be valid, a will must meet with the following four requirements:

1) **The person making the will must have had testamentary capacity.** This means that he or she must have been of sound mind when the will was made. The person must have understood the nature of the act, the extent of his or her estate, and the persons to whom distributions could be made. This means that a person suffering from delusions or a mental disorder making this understanding impossible would likely lack testamentary capacity.

2) **The person making the will must have known and approved of its contents.**

Hannah Young, Senior Associate Solicitor

This is a different ground to the first. The first relates to the ability of a person to make a will. This second ground looks at the circumstances in which a particular will was made. A dispute here can relate to suspicious involvement of beneficiaries in the preparation of a will, or language barriers which prevent a person being able to read and understand the contents of their will before signing it.

3) **The person must not have been unduly influenced into making the will.** This is a strict test requiring evidence of coercion, although the extent of the coercion which will amount to undue influence will depend on the strength of will of the person whose wishes were allegedly overpowered.

4) **The will must have been executed properly. This refers to administrative requirements.** A will must be in writing and signed, with that signature witnessed by two or more witnesses present at the same time. Beneficiaries cannot be witnesses.

If it can be proven that one of these grounds have not been met, a will can be ruled invalid. Unfairness is not a reason for invalidity (although some 'unfairly' excluded claimants may have a claim for financial provision from the estate under the Inheritance (Provision for Family and Dependants) Act 1975).

How disputes are dealt with

Needless to say, the parties involved in a will dispute often have very strong feelings and opinions on the matter. However the trickiest issue in all will disputes is evidence. Of course, by the time the dispute arises, the key witness (the deceased) is unavailable for consultation. The parties to the dispute will not be impartial, and so the evidence of the attesting witnesses (those people who witnessed the signing of the will) and that of any other independent witnesses is very important.

It is crucial that the available evidence is gathered and carefully considered at an early stage to see whether it is sufficient to prove invalidity. The burden of proof lies, in most cases, with the party alleging invalidity. This burden can reverse, for instance where a beneficiary has prepared the will.

Will disputes are usually heard in the Chancery Division of the High Court where complicated rules of procedure apply. This makes it very difficult for litigants in person (parties to a dispute who aren't represented by a solicitor) to do their case any justice. Proceedings are costly and there is always a risk attached to any litigation, so parties are encouraged to seek mediation early, particularly so that the incurred costs do not become disproportionate to the value of the estate.

If you'd like some professional and friendly advice on any potential or ongoing probate or inheritance disputes, then contact Hannah Young on 01234 270600.