



Davies
Evans &
Law^{LTD}

ASSET PROTECTION
SPECIALISTS

WRITING THE TAXMAN OUT OF YOUR WILL

What Next?

A Guide For The Future

Immediately

When the documents have all been signed, witnessed and registered they need to be kept somewhere safely. In the event of a death it will be the original documents that are required – copies won't do. So, if they are destroyed in a fire or simply lost, it will be as if they never existed. Likewise, you may wish to ensure that they do not fall into the wrong hands after you have passed on; they might be deliberately destroyed by someone who doesn't like the instructions you've set out.

Storage: If you have not already asked us to arrange storage but would now like to, please let us know. There is a small annual charge which also covers insurance etc, but other documents (such as the deeds of your family home) can be stored within that one fee.

Wherever the documents are to be kept, it is advisable to inform your executors, trustees, attorneys and/or other appropriate family members.

The House

Couples: In the case of a couple, the tenancy of the property will usually have been severed, so that they now own it as tenants in common rather than joint tenants. This means they each own a portion of the value (usually 50%) rather than owning the whole between them. **At this time the property has not been placed into trust.**

It is only on the death of either spouse that the will directs a share of the property to the trust (See below).

Singles: For single, widowed or divorced persons all or part of the property value may be placed into a Family Probate Trust. This trust is primarily for the benefit of the settlor, during that person's lifetime; then for other beneficiaries. The settlor is also often a trustee – thus having 3 roles within the trust (settlor, trustee, beneficiary).

Monetary assets may also be placed into Family Probate Trusts. Again, the settlor has access to those funds during his or her lifetime. Please seek advice from us before transferring funds into the trust.

Alterations

In normal circumstances you can now relax, knowing that you've put the planning in place. If you want to make changes in the future (perhaps on how you wish the estate to be shared, or to change beneficiaries), please contact us. Likewise you should not place additional funds into the trust(s) without first seeking our advice.

If you do have a change in your financial circumstances, especially a significant increase in the value of your assets (perhaps through a windfall or inheritance), please contact us to see if we need to make changes to the structure of your plan.

Very often changes can be made by amending your memorandum of wishes.

Otherwise there is normally nothing more to be done until an “event”. However, it’s sensible to read through your documents every so often, just to ensure they still match your own wishes.

Events

These might be such occurrences as loss of mental capacity, death, marriage or requiring Care. In any of these cases you, or a personal representative, should contact us for advice on how to proceed. However, the following is intended as a general guideline.

Loss of mental capacity: If the person is a trustee of a *trust*, they will now need to be removed, possibly to be replaced by one or more of the nominated reserve trustees. Deeds will be drawn up for these purposes. It is better that the particular trustee should resign at the outset of any illness, where possible, rather than be removed when capacity has been lost.

If mental capacity is lost (as confirmed by a medical practitioner) any existing unregistered *Power of Attorney* must be registered with The Office of The Public Guardian (OPG). You should note that this can be a prolonged process. As the power cannot be used until registered, you should start as soon as you are able.

Please note: a power of attorney does not give entitlement to take over a trustee’s duties.

Death: On the death of a testator there are a number of duties to be carried out by the executor(s) or other family members.

Who do I notify?

In the first five days it is important that the following is done:

- The deceased’s doctor is notified
- A funeral director is notified to commence arrangements. You should tell your family in advance of any special requests or pre-paid funeral plans
- The death should be registered at The Registry Office
- Advise any departments who have been making payments to the deceased (Tax Credits, benefits, pensions etc

- Any appropriate life insurance companies, investment advisers or providers, banks etc should be contacted
- Relatives and people close to the deceased will also wish to be informed
- Where the deceased was an attorney under someone else’s Power of Attorney, and a Replacement Attorney has been nominated, the OPG should be informed.
- The executor(s) of the will should be informed to enable them to start the process of obtaining Probate

The executor(s) should apply to the Probate Registry for a grant of probate. This confirms that the executor has the authority to deal with the deceased person’s assets. The personal representative won’t be granted probate until some or all of any Inheritance Tax due on the estate has been paid.

Moving to Trust

Where a will and trust package has been set up, it will be necessary to move the assets of the deceased into the trust(s). In the case of a couple, this will include that part of the family home previously owned by the deceased – as a tenant in common. The executors will need to convey that share into the trust(s) already set up by the deceased, and in his or her name.

Whilst the surviving spouse will continue to own his or her share of the family home, the other share will now be “held” in the names of the trustees including, very often, the surviving spouse.

Other assets held in the sole name of the deceased must now also be moved into the trust(s). In this way they too can be protected from dangers such as Long Term Care costs, a future divorce or bankruptcy settlement of a child or grandchild, “Next Generation” Inheritance Tax and Marriage After Death. They can also help reduce an Inheritance Tax liability of the surviving partner.

Some assets, such as company shares, can be moved into the trust as they are – although advice should be taken regarding tax implications. Others, such as ISAs and Premium Bonds, will have to be encashed on the death of the holder, with the resultant money then placed into trust. A

Trustees' Bank Account will be required for this purpose. This is simply a type of current account, used in much the same way as we all do; to move money one way or the other.

Any assets held jointly by a couple will now revert into the sole ownership of the survivor, although it is possible to change the ownership posthumously, thereby allowing a portion to move into trust at that time.

Executors and Trustees

In simple terms the executors are responsible for bringing together all the assets of the estate, paying any outstanding bills (such as taxes) and distributing the remaining amount according to the will; in this case to the trust(s).

Now the trustees take over. They are responsible for administering the trust within the law, investing the funds (having taken professional advice) and distributing those funds – as appropriate – to the potential beneficiaries.

Of course, very often the same people carry out both roles; just wearing different hats at different stages.

Distribution

Alongside the trust is a Memorandum of Wishes. This sets out to the trustees how the settlor wanted the assets to be shared out.

If money from the trust is to be distributed to beneficiaries (to the surviving spouse or children, perhaps) it is advisable to consider the use of lifetime loans rather than direct gifts. This is not intended to restrict the use of that money but allows the protection of the trust to continue in the event of entering Care, a future divorce or Inheritance Tax liability etc. It also means the trust can continue protecting the following generations.

It is perfectly possible for a beneficiary to receive his or her full share at outset as a lifetime loan. It is then protected from a future divorce and other dangers. On that beneficiary's own death, the loan is repaid to the trust. Not being part of the beneficiary's estate, it is not liable for Inheritance Tax. It is then loaned to the next generation for their lifetimes, and so on. A Loan Certificate will need to be correctly drawn up for this purpose.

This is vital, as proof that the distribution was a loan rather than a gift, so has not left the protection of the trust.

Where funds are remaining in the trust, it is imperative that professional investment advice is sought by the trustees. Once a decision has been reached, the trustees will pass the funds to the investment provider by means of a cheque drawn against the Trustees' Bank Account. Investments subsequently encashed will be paid back into the account, from where they can be reinvested or distributed to beneficiaries.

Interest in Possession (Residue) Trusts

Where a married couple have included these as a part of their will package, it is important to consider the possible need for further planning. You should contact us for advice and guidance.

Inheritance Tax Planning (IHT)

Following the death of the first spouse, the survivor may wish to gift assets to children or other relatives, taking account of the 7-Year Rule. This is usually best achieved through trusts, and our advice should be sought.

Family Probate Trusts

Assets placed in these during lifetime do not pass on via the will, but to the next line of beneficiaries within the trust. This is at the discretion of the trustees but guided by the Memorandum of Wishes.

Even though such assets do not pass through the will, they are still regarded as part of the settlor's estate for IHT purposes.

Marriage

Unless it has been specifically mentioned in the will, the marriage of the testator will render it void. Therefore a new will must be written, even though this may be almost identical to the original (e.g. leaving the estate to trusts already set up). The trusts will not become void by marriage.

Long Term Care

If care is required at some future time, please contact us for advice, to ensure the package you have put in place continues to protect your assets, including the family home.

Ongoing

Trustees should also be aware that annual tax returns may be required where the trust holds assets in excess of the £10 de minimis put in at outset.

When a Power of Attorney is actually in use, it is advisable for the attorneys to retain the original documents. You'd be surprised at how easily they go missing once the banks or insurance companies get their hands on them! Use certified copies to send to financial institutions etc.

Other matters you may wish to consider

- **Lasting Powers of Attorney** (for property, money etc)
- **Lasting Powers of Attorney** (for health, long term care considerations etc)
- **Living Wills**
- **Gift Trusts**
- **Deeds of Variation** (perhaps where you have benefitted from a will and wish to protect that inheritance more efficiently)
- **Probate** (if you are acting as executor, we can arrange expert help).

If you wish to discuss any of these, please contact us on 0845 017 6527.

Glossary of terms

Testator: the person whose will it is

Settlor: someone who has set up a trust

Trustee: someone appointed to manage a trust, usually alongside other trustees. This includes taking investment advice for the assets, and distributing those assets under the terms of the trust deed.

Reserve Trustee: not a trustee now, but nominated for appointment at a later time

Beneficiary: a person who can benefit from the trust assets

Marriage: in this publication this includes Civil Partnership

Donor (under a Power of Attorney): person who puts a power of attorney in place and appoints attorneys

Attorney (under a Power of Attorney): person appointed by the donor to act on the donor's behalf

This information document contains general planning guidance.

It is not intended as precise legal interpretation and should not be regarded as such. Nor should it be construed as advice for personal planning.

You should always contact Davies Evans & Law Ltd for individual advice.

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