



## Inheritance Tax Free Allowance

Since 9 October 2007 spouses and civil partners have been able to transfer their inheritance tax free allowance (known as their 'nil rate band') to the other so that any proportion of the band not used up on the death of the first partner can be used by the survivor on their death. This effectively means that a couple can benefit from double the individual nil rate band (currently £312,000).

So how has this worked in practice, and does it mean that previously successful tax planning measures are now redundant?

On the face of it, the transferable nil rate band has allowed many more married couples and civil partners to leave their estate without any inheritance tax liability. However, there are still valid reasons for tax planning in your will. For example co-habiting couples are not able to transfer their nil rate bands. In these circumstances it will be necessary to resort to traditional tax planning devices, such

as nil rate band discretionary trusts. These trusts will effectively 'ring fence' an amount equal to the nil rate band by passing it into the hands of trustees, who will hold the money for the benefit of those people named in the will. Even for married couples and civil partners, nil rate band trusts can still be highly relevant.

For example by protecting the nil rate band on the first death, it may be possible to utilise three tax free bands, should the survivor remarry. Also, by ring fencing the money in this way, it can be protected in situations such as divorce and bankruptcy. Indeed, there are many reasons why this might be appropriate, for example in order to protect money from assessment in respect of the survivor's care fees.

So, whilst the transferrable nil rate band has gone some way to reducing the burden of inheritance tax, it is still vital to forward plan and seek professional advice about individual circumstances. If you need any assistance in this area then contact our teams on 01206 217300 or 01245 453800.

## When a Dog is Not Just For Life

Legally, a pet is a "chattel" – an item of personal property belonging to their owner just like a toaster or a sofa. But for many, pets are much-loved members of their family.

Money cannot be left to animals in their own right. The simplest option is to have an arrangement with a named person who will receive a legacy under your will to care for your pet. Other options include setting up a trust or using a charity, but neither option comes without its obstacles.

Either way, you will need to make specific provision in your will - and it may not be a walk in the park to draft!



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## Lasting Powers of Attorney

As life expectancy increases, handling financial and personal affairs later in life can become more difficult, particularly if physical or mental incapacity is becoming a problem.

Lasting Powers of Attorney (LPAs) can offer reassurance to all age groups that their affairs will be handled by someone they trust in the event that they are unable to do so personally. If somebody loses capacity and no LPA has been made, a third party must apply to the Court of Protection to be appointed to deal with their affairs; it may be someone they would prefer not to handle their affairs and the procedure can be lengthy, costly and potentially burdensome.

There are two types of LPAs. The Personal Welfare LPA allows the donor (the person making the LPA) to appoint up to four attorneys to make personal or medical decisions on their behalf if, and only if, they have lost capacity to do so. This can include decisions such as refusing or consenting to life sustaining treatment. If they do not wish their attorney/s to have such wide powers they can include restrictions or give guidance.

The Property and Affairs LPA ensures that the attorney/s can look after and manage the donor's financial affairs. This LPA can take effect as soon as it is registered with the Office of the Public Guardian and can be used, if required, whilst the donor still has capacity. The power can be limited so that it only comes into effect if the donor has lost capacity.

Although losing capacity is not a scenario that anyone likes to envisage, the unfortunate reality is that it is becoming more prevalent and by making an LPA it will be you, rather than the court, who will decide who makes decisions on your behalf, at your most vulnerable time.

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## Inheritance Disputes

There has been a spate of high profile inheritance dispute cases. Our own team of specialist lawyers has recently acted for a beneficiary and executrix, Mrs Samuelson. The case concerned the will of her brother, a Colchester man, Mr Boyles. His other sister was excluded from the will and she sought to challenge its validity on the grounds that he did not sign it, that he was incapable of giving instructions to a will writer or understanding what arrangements had been made, and lacked the necessary mental capacity to make a will. The High Court ruled in favour of our client, Mrs Samuelson, but not without the family battling each other through a lengthy and costly court process.

This case, and others like it, reinforce the need to make a will that is as clearly defined in law as possible so that the people you want to benefit will do so following your death. If you intend to exclude any close family members under your will, specialist advice should be sought to ensure that

## Stop Press

**Are you looking at ways to reduce your inheritance tax bill? If so then there are various lifetime exemptions of which you can take advantage:**

- **Annual Exemption – Each person can give away £3,000 per tax year free of inheritance tax.**
- **Surplus Income – You can make regular gifts out of surplus income, so long as the gifts don't reduce your standard of living. It is important that the gifts are of a recurrent nature.**
- **Small gifts – You can make as many small gifts of up to £250 to as many people as you like but you cannot combine this with another exemption.**
- **Wedding gifts/civil partnership ceremony gifts - parents can each**

your wishes are clearly defined and explained, usually by way of a side letter, so that there is as little chance as possible that it could be challenged after your death.

Inheritance disputes often centre upon an individual's mental state or capacity at the time they made their will. In many cases a will would have been signed years, even decades, before it is needed and often these cases turn upon notes made at the time by the will drafter or solicitor, making it even more important to instruct an experienced legal advisor.

Unfortunately, even the most tightly drafted wills can become the subject of a dispute and if you should find yourself facing this situation, Birkett Long LLP is one of the few heavyweight law firms outside of London that can provide advice on this specialised topic. We have a specialist contested trust and probate team which is headed up by Adrian Livesley, a member of the Association of Contested Trust and Probate Specialists.

**give their child £5,000, grandparents and other relatives can give £2,500 and anyone else can give £1,000.**

- **Larger gifts – You can make a gift of any size and provided you survive 7 years it should fall outside of your estate for inheritance tax purposes. There may be other tax implications of making gifts and advice should be sought before doing so.**

**This is only a brief summary of the exemptions available and Birkett Long can advise you further on the best ways to maximise your inheritance tax saving.**

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