

Private Client Write News

Clear, pragmatic advice for you, your family and your property.

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Do I really need to make a Will?

To answer this question, you need to know what will happen if you don't have a Will.

If you are married with children, then your spouse will receive all assets in your joint names, plus the first £250,000 of assets in your sole name and your personal belongings; after that your assets will be split. Half will go to a trust which pays its income to your spouse for his or her life, with the capital going to your children on his or her death. The other half will go to your children when they reach eighteen.

If you are married but you don't have children, your spouse will receive all assets in joint names, your personal belongings and the first £450,000 of the assets in your sole name; the remaining assets are split in half between your spouse and your family.

If you are not married, all your assets will go to your children at the age of eighteen. If you don't have children then your assets go to your family, starting with your parents, but if they have died then your siblings and if you have no siblings to more distant relatives.

There are many circumstances where the above arrangements are not suitable, most commonly in the case of:

- Unmarried couples
- Second marriages
- Business assets - see next article
- Where you want to ring-fence assets against care fees.

In the case of a late second marriage, you may simply want to be sure that your spouse can stay in your home for as long as he/she wishes, but otherwise leave your estate to your children. On the other hand, if you have young children in your second marriage, you will want to make sure they and your spouse are

properly provided for, while still ensuring that your children from your first marriage are not left out. Both these scenarios can usually be dealt with by the use of trusts (which can be designed to give your family full control). We have a lot of experience in this area and will be able to suggest solutions.

Turning to care fees, if one of you is in residential care and the other one dies, leaving everything to the person who is in care may in reality mean leaving your combined estate to social services. It is possible to protect against this risk in advance if you leave your own estate to a trust. If this is done your surviving spouse can then have the use of your cash assets but your share of your combined estate can be sheltered from care fees.

If you are unmarried without children, you will of course want to make sure that your estate passes as you intend, rather than simply in accordance with the above intestacy rules.

Finally, many people make wills to ensure that their affairs are organised to minimise the tax which will be payable on their death. We can advise on tax-efficient Wills and lifetime tax planning.



Should you make a Lasting Power of Attorney?

A Lasting Power of Attorney (“LPA”) is a means of appointing someone to manage your affairs if you become unable to do so yourself. They are commonly made by older people who appoint their adult children to look after their finances in those circumstances.

Understandably, many people feel there is no need to make an LPA while they are in full health. However, if you wait too long then this can bring its own problems.

The most important thing to remember is that the person making the LPA must have the appropriate mental capacity to understand what they are doing. If they haven’t, then they cannot put an LPA into effect and any person who wants to be their attorney will have to apply to the Court of Protection to be appointed their Deputy instead (see below).

Whether or not the person making the LPA (“the Donor”) has sufficient capacity is a matter of understanding rather than one of memory, so short term memory loss of itself should not be a barrier to making an LPA. The Donor only has to be able to retain information long enough to be able to consider the implications of their decision.

You will need an independent person to confirm that the Donor understands what they are doing. If it is clear that the Donor has capacity, then we can do this for you. However,

if the position is unclear then it is sensible to ask the Donor’s GP to give this confirmation.

An LPA has to be registered before it can be used and it takes more than three months to do this.

Many people are, understandably, put off by the cost and effort of making an LPA. However, we have streamlined the procedure to allow LPAs to be made in a cost-efficient manner.

What if there is no LPA?

If you don’t have an LPA in place, then if you lose capacity no-one can deal with your financial affairs. An application will have to be made to the Court of Protection (“CoP”) for a Deputy (usually a family member) to be appointed for this purpose. In order for an application to be made, you need:

- A list to be made of all your assets
- A report from your medical practitioner about your mental capacity (for which a charge may be made)
- Notice to be served on your spouse, children and adult grandchildren and anyone else who might be concerned with your welfare
- Court Fees of £525
- An insurance bond (typically £200)
- Legal fees (normally about £2,000)

It usually takes about five months for the CoP process to be completed, during which time no-one has access to your funds. In addition, each year your Deputy will have to file a report with the CoP and pay a supervision fee (typically £175) and a fresh insurance premium.

By contrast, an LPA involves a registration fee of £130 and, usually, one-off legal fees of about £600 (including VAT). You would need one visit to our office. Once the LPA has been registered then there are no further fees and (in the ordinary course of events) no further involvement with the CoP. Usually LPAs are registered straight away so that they can be used as soon as the need arises.

Business Property Relief - making the most of it

Business Property Relief (“BPR”) is a full exemption from Inheritance Tax (“IHT”) for interests in a trading business.

It is available if a business asset has been owned for at least two years prior to death. This means business assets can be passed to your heirs tax-free. However, you should take care not fall into the following easy traps which may cause BPR to be lost:

- Your shareholders/partnership agreement

This may provide that if one of the business partners dies, the others will buy out his or her interest. Unfortunately, if this is a definite obligation on the surviving business partners, then HMRC will say that the assets in the deceased’s estate were not the business interest itself, but an entitlement to the proceeds of sale. “Proceeds of sale” do not benefit from BPR so this would mean that the full value of the deceased’s share would be subject to IHT. The way to avoid this is not to have a binding sale and purchase obligation in the shareholders/partnership agreement. Instead, each party can be given an option to insist that the other party either sells the interest (where the other party is the deceased’s family) or buys the interest (where the other party is the surviving business partners) at a price established by a specified formula. Often such arrangements are backed up by life assurance written into trust so that surviving business partners have the funds to buy out the deceased business partner’s share.

- Your Will

In a happy marriage, the natural impulse is to leave all your assets to your surviving spouse. However, if this is done your family can pay far more IHT than is necessary. Suppose you leave your interest in the business to your surviving spouse; there will be no IHT because of BPR and spouse exemption. Then your widow(er) sells the interest in the partnership/company to the other business partners in accordance with the shareholders/partnership agreement. Now he or she has cash, and if this is unspent at the date of his or her death, it could be subject to IHT in the usual way and 40% will go in tax.

Alternatively, you could leave your business interests to a discretionary trust. There will not be any IHT because of BPR. A discretionary trust is a trust where you nominate the beneficiaries (usually your surviving spouse and children) and appoint the trustees (who can include the surviving spouse). It is up to the Trustees who gets what income and capital from the Trust, at their absolute discretion. As no-one has an entitlement to the assets in the trust, they do not form part of any person’s estate and are unaffected by IHT on the death of a beneficiary, even if that beneficiary is the only person to have benefited from the trust.

Accordingly, in the above scenario, if the trust sells your business interests to your surviving business partners, it doesn’t matter that it now has cash instead of business assets; and while your surviving spouse has access both to the income and capital in the trust, any amount remaining in the trust on his or her death can pass to the next generation free of IHT.

Lifetime giving – regular gifts from surplus income

Many people know that if they give away an asset, and survive for 7 years, then that asset is outside their estate for IHT purposes.

However, fewer people know about the exemption for regular gifts out of surplus income. In this case the gifts are immediately exempt and there is no requirement to survive 7 years. This is quite separate from the annual allowance of £3,000 for each donor (plus whatever is unused of the previous year's allowance).

Gifts made out of income can be exempt if:

- They are made regularly (at least once a year); and
- The Donor has sufficient *income* to support his or her lifestyle even after making the proposed gifts.

What is meant by “surplus income”? As a rule of thumb, this means income on which income tax is payable. Thus withdrawals from insurance bonds are excluded. It has to be genuinely surplus, ie you can't spend your income in gifts and then live off withdrawals of capital. You have to have income above what is required for your living expenses.

So, what is “regular giving”? There has to be a settled pattern of giving. The classic examples of gifts within this exemption are the payment of school fees for grandchildren, or the payment of life assurance premiums. However, less frequent giving, such as annually, is acceptable, provided a settled

pattern can be shown. In addition, the amount does not have to be fixed – it could be a figure accumulated through the year in a deposit account, for instance. Even if the donor dies after only one or two gifts, the exemption may be claimed if a firm intention to make regular payments can be shown.

After the Donor has died, HMRC will require the executors to declare the Donor's income and expenditure in the relevant tax years (up to seven years prior to the date of death). The income is not usually a problem since it can be found in the Donor's tax returns. However, expenditure is more difficult. We usually give clients who are making such gifts a copy of the relevant form and suggest it is completed as they go along, saving their executors a difficult job.

The income exemption is extremely useful, particularly for older clients who may find they cannot spend all their income and who have younger relatives who would really benefit from such gifts.



The Private Client Department - Key Contacts



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Wills, Trusts & Probate

Amanda has many years' experience of dealing with a wide range of private client matters, particularly for high net worth individuals. She studied Law at Sheffield University before working at Elliott and Company (now part of DWF), Addleshaw Sons & Latham (now Addleshaw Goddard) and Haworth Holt Bell. Amanda joined Neil Myerson in 2011.

Amanda is a member of the Society of Trust and Estate Practitioners (STEP) and has particular experience in dealing with wills and inheritance tax planning, the administration of estates and trusts, powers of attorney and planning for the elderly.

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Virginia Taylor
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Virginia studied Law at Birmingham University before working at Glaisyers in Birmingham and the Manchester offices of Eversheds and Addleshaw Goddard. She has been advising our clients on private client matters since she joined Neil Myerson in 1999.

Virginia has over 25 years' experience in a wide range of private client matters including probate, trusts, wills, inheritance tax planning, powers of attorney and court of protection cases.

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Morag has been practicing as a solicitor in England since 1987, after initially qualifying as a solicitor in Scotland. She has been providing conveyancing advice to our clients since she joined Neil Myerson in 1994.

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