

Tax, wills & PROBATE

FIRM'S LOGO

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family overturns will that benefits carer

Elderly people can become suggestible and it is, regrettably, not uncommon for avaricious people to attempt to influence them for personal gain.

In a recent case in point, an elderly and wheelchair-bound lady altered her will a few months before she died so as to bequeath her £400,000 estate to the son of her carer. Her previous will had left her entire estate to her family.

The family contested the new will, claiming that the woman had fallen under the influence of her carer and was too mentally infirm to resist her.

In addition, more than £400,000 had been withdrawn from the woman's bank account in the three years prior to her death. The evidence of undue influence was sufficient for the judge to rule that the woman's earlier will, made in 2002, should stand. In addition, it is understood that following a police investigation into the depletion of the woman's assets

in the final few years of her life, papers have been passed to the Crown Prosecution Service.

This sort of circumstance is a nightmare for the family involved.

If you are concerned about the possibility of people abusing the trust of your elderly relations, please contact us for assistance. It is always better to avoid problems than to deal with the aftermath.



IHT and the recession

The recession hasn't brought much favourable comment, but

falling asset values do present opportunities for savings on Inheritance Tax (IHT). Here are some ways that you can save IHT when asset prices are depressed.



lifetime gifts

In general, the value for IHT purposes of an asset transferred is its value at the date of transfer. Giving away assets as lifetime gifts when prices are low means that a subsequent increase in value will belong to the new owner.

Consideration should be given to transferring assets when values are low and the 'best' assets to transfer are

those which are most likely to show gains.

falling property prices

The IHT on the value of a property can be paid in instalments over 10 years.

If, however, a property is sold within four years of death at a price below the valuation fixed for probate, then the executor can elect for the IHT liability to be recalculated based on the reduced value. Only the executor can make this election, so if the property is passed to a beneficiary and then sold, the election is not available.

When a property is sold, the IHT due becomes payable immediately. Arranging the sale of a property just to save IHT requires careful thought as the costs associated with such a transaction are not inconsiderable.

Where a house is transferred to a beneficiary, the base cost of the asset will be the IHT value. Therefore, when the value of such an asset falls, a subsequent sale by the beneficiary may lead to a loss for Capital Gains Tax purposes.

other issues

The other main issue to consider as one gets older is the possible need to fund the cost of long-term care. This is a much greater threat to the wealth of most families than IHT, since the system is, in practical terms, confiscatory.

Planning to protect family wealth and to fund future care needs must be approached with careful thought and knowledge of the relevant law.

Please contact us for advice on this sensitive matter.

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dealing with your affairs if you are no longer able

A property and affairs Lasting Power of Attorney (LPA) is a power of attorney which allows you to authorise one or more named persons to make decisions on your behalf in order to manage your property and financial affairs if you are no longer able or willing to do so yourself.

What differentiates an LPA from the old-style Enduring Power of Attorney (EPA) is that once an LPA is registered with the Office of the Public Guardian, your attorney can act before and after you lack capacity. EPAs that were in place before these were abolished (1 October 2007) continue to be valid. Under an EPA, however, if the donor (the person who made the EPA) loses the mental capacity to make decisions on their own behalf, it is then necessary to go to court in order to obtain confirmation of the right to act.

The advantage of having an LPA in place is that it enables other family members or trusted friends to take over dealing with your affairs smoothly and progressively in the event that you lose the capacity or the will to do so. When decisions have to be made for you, your attorney must always act in your best interests.

If you are worried about how your affairs will be dealt with in the future, we can help you decide the best course of action.

IHT NIL RATE BAND – KEEP YOUR HANDS ON THE OLD WILL

You may think that after an estate has been probated and the assets have passed to the surviving spouse or civil partner, that is the end of the matter and the paperwork (including the will) can be consigned to the shredder after a suitable period of time, but it is important to retain the will and the estate tax paperwork.

The reason for this is that the way Inheritance Tax (IHT) now works is to allow the beneficiaries of a surviving spouse or civil partner to make use of the 'unused percentage' of that person's late partner's IHT 'nil rate band', no matter when he or she died.

The way it works is as follows. Assume, for example, that a husband died and left a net estate of £50,000 at a time when the IHT nil rate band allowance was £150,000. That leaves 2/3rd of the IHT nil rate band unused. If his wife subsequently dies when the IHT nil rate band has risen to £200,000, her IHT nil rate band will be increased by 2/3rd of that amount (i.e. £133,333).

The newspapers have recently contained several stories concerning the estates of widows of men killed in the Second World

War that have avoided substantial amounts of IHT because the original documentation relating to the husband's estate in each case could be produced to justify a claim.

suspended sentence for widow who forged will

A widow who forged a will when her husband died intestate was recently given a suspended jail sentence and ordered to pay £3,500 in prosecution costs after she pleaded guilty to the crime of 'using a false document'.

When the woman's husband died, she persuaded two witnesses to sign the back-dated document, which she attempted to pass off as her late husband's final will and testament. The woman's actions may well have been no more than an attempt to make the administration of her late husband's estate easier and more orderly, but she committed a criminal offence.

It is straightforward and inexpensive to make sure you have a valid will and the downsides of failing to have one are clear so please contact us for guidance.

executor with hand in till jailed

The UK has some of the strictest laws in the world to protect beneficiaries from rapacious executors and trustees. Recently, a woman who was the co-executor of a man's will and trustee for his minor child was jailed for three years after making improper withdrawals from the funds under her care.

The circumstances were that a man had died at the age of 41, leaving a widow and minor son. The man's pension fund was put in trust for the son and the man's widow and sister were the trustees of the

fund and his executors. The sister forged the widow's signature in order to make withdrawals of money from the trust account.

She was convicted of forgery and has had her personal assets frozen pending a confiscation order being made under the Proceeds of Crime Act 2002.

If you suspect that the executor of a will or trust of which you are a beneficiary is acting improperly or misusing the estate or trust assets, please contact us for advice.

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