

Essential Tax Planning



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Ensuring that our family would be well provided for financially should anything happen to us can be a big concern.

With this in mind many of us have pension arrangements which would pay out a tax free lump sum death in service benefit or life insurance policies which would pay out on our death. These sums can be substantial, typically at least three or four times salary for death in service benefits or hundreds of thousands of pounds in life cover (often intended to cover a mortgage).

Whilst it is comforting to know that this financial assistance is there, these extra benefits are often overlooked when thinking about inheritance tax planning and the value of your estate. If these benefits are paid out directly to a surviving spouse, they can significantly increase the value of their estate and immediately take them into the realms of inheritance tax.

One simple planning tool is to make sure that death in service benefits and the proceeds of life insurance policies are paid into trusts instead of directly to a surviving spouse.

In this way the value of the funds remain outside of the surviving spouse's estate for inheritance tax purposes and can be protected for the wider family longer term. The benefits are not however "locked away" and the surviving spouse can be a beneficiary of the trust. The funds can be made available to assist the surviving spouse during their lifetime, by way of direct payments, loans or the acquisition of assets for use by the spouse - whichever seems the most appropriate or efficient at the time.

It is a relatively simple procedure to set up one or more "shell" trusts which can sit dormant until such time as they may be needed. You then inform your pension scheme that you would wish them to pay any death in service benefits to the trust or assign the benefits of any life policy. The funds will pass into the trusts tax free on your death and can be used to benefit your family after your death.



If you would like further information or advice please contact

Victoria Motley on 01772 220022 or email victoria.motley@forbessolicitors.co.uk



Do you have a probate headache?



Probate is the term commonly used to describe the process of sorting out someone's financial affairs after their death.

This can be an emotional and difficult time and many people feel overwhelmed and daunted by the prospect. You can find yourself with the responsibility for sorting out someone's estate because you are the next of kin or because you have been appointed as an executor in a Will but many people are unsure of what they need to do and what their responsibilities are.

Being an executor or having to deal with the administration of a loved one's estate is thankfully not something that most of us have to deal with on a regular basis. However, this adds to the stress as you try to negotiate an unfamiliar process. More people are able to access a wider range of financial products through the internet and as a result people's financial affairs are becoming increasingly complicated. There are many traps for the unwary including unknown creditors, tax and benefits issues. Disgruntled beneficiaries and family tensions can also add to the issues as can a poorly drafted Will. All too often these problems do not come to light until later when the consequences are greater and things are more difficult to sort out. Executors can then find themselves facing criticism or worse, court action.

At Forbes we can help with any aspect

of the probate process whether that is simply providing some advice and assistance to set you on the right path, checking forms or professionally administering the whole estate on your behalf. Many executors do not realise that obtaining expert help is a reasonable executor's expense and the costs of employing a solicitor to give advice or deal with the administration of the estate can be met from the estate.

We can assist you with as much or as little of the administration process as you need and can offer fixed fee quotes to help you budget. For example, you may simply want someone to audit what you have done as an executor and prepare estate accounts as a record which can be referred to in the future. This is particularly important for spouses who want to rely on the Transferable Nil Rate Band for Inheritance Tax.

By getting expert help you will have the peace of mind that you have done the job properly.

If we can assist you in any aspect of the administration of an estate, please do not hesitate to call us on 01772 220022 or e-mail wills@forbessolicitors.co.uk.

Typical areas that we can help you with:

- Obtaining a Grant of Probate
- Notifying third parties such as banks and utility companies
- Arranging valuations
- Dealing with the deceased's tax affairs
- Arranging house clearance
- Calculating Inheritance Tax due and advising on available reliefs
- Managing the deceased's assets until they are sold or transferred
- Identifying and protecting the executors against creditors
- Advising on insolvent estates
- Paying the deceased's debts
- Selling the deceased's property or transferring it to beneficiaries
- Selling shares or transferring shares to beneficiaries
- Paying any legacies
- Preparing estate accounts to show that the estate has been administered correctly
- Distributing the estate to the right beneficiaries
- Advising on trust arrangements within the Will
- Using the "Transferable Nil Rate Band"
- Advising on variations of the Will after death - for tax purposes or to vary entitlements under the Intestacy Rules
- Advising on disputes over a Will or an Inheritance
- Dealing with claims by dependents

Inherited Property on Divorce

If you are divorcing and you or your spouse have inherited assets, those inherited assets are definitely a factor which must be considered in any financial settlement.

The Court will not ignore the existence of the inheritance, but can decide to give more of the other matrimonial assets to the party without the inheritance, keeping in mind the fact that the other party has the benefit of that additional wealth. Or alternatively, in some cases, the Court can decide to 'ring fence' the inheritance and keep it out of the assets to be divided altogether.

The factors which the Court would take into consideration in deciding how much weight should be given to the inherited wealth include the type of the asset inherited, when it was inherited, and the extent to which it was kept separate from the other matrimonial assets owned by the divorcing couple.

It is important to bear in mind however that if the assets of the marriage are not sufficient to meet the needs of the parties, then the Court is likely to draw upon the inheritance to meet those needs.

In some cases, wealthy parents anticipating problems within the marriage of their offspring can take steps to amend their Wills or enter into Trusts, as a "damage limitation" exercise, and this can be successful if properly drawn and in the right circumstances.

It does seem that the Courts attribute significant weight to this type of 'contribution' by one party to the marriage, i.e. introducing an inheritance. It is usually relatively easy to identify an inheritance, and often it will have been very clearly documented in the form of a Will or Trust.

It does seem to be the case that when wealthy couples are divorcing, the Court is anxious to try to keep a family's assets within that family.

In other words, any inheritance is relevant and must be taken into consideration, although depending on the circumstances, it is not necessarily treated in the same way as the other assets, and not always "dipped" in.



For further information please contact Dawn Baker, Partner in the Family Department on 01772 220022 or email dawn.baker@forbessolicitors.co.uk

News

Triple Success For Forbes Wills Team

Three members of the Forbes Wills, Probate, Tax and Trusts department have recently been recognised by professional bodies.

Ian Howard is now fully STEP (Society of Estate Practitioners) qualified after gaining his STEP Diploma. Four members of the Forbes' Wills team are now fully qualified STEP members which demonstrates the high level of expertise the team are able to offer to clients.

Greg Poole was awarded Will Preparation Certificate Student of the Year by the Society of Trust and Estate Practitioners (STEP) after gaining the highest mark in the country in the Certificate in Will Preparation. He was presented with his award at the STEP Excellence Awards which celebrate the highest achievers in STEP thesis papers and exams.

Jane Flaherty is now a member of the national association Solicitors for the Elderly. SFE is an association of lawyers who specialise in legal services for older people and their carers and members are required to have spent a substantial amount of time working for elderly clients.

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STEP
Society of Trust and
Estate Practitioners

Should we plan for our future care needs?

There is no way of knowing whether we will need care when we are older but if we do, particularly residential care, there are cost implications that can affect the whole family.

Most people fear that if care becomes necessary, their assets, including the family home, will be depleted. This can sometimes lead to people gifting assets away to their children without due consideration of the consequences, such as bankruptcy, death of a child in your lifetime or possible tax implications.

A further consequence is where the Local Authority may deem that you have made gifts to prevent you from having to pay for care. If this is the case you will be assessed as if you still own the capital value of the gifts. In some situations the Local Authority could look to the beneficiary to pay the care fees.

A common misconception is the belief that if a gift is made, after seven years it will not be taken into account. A Local Authority has no time limit as to how far back it can go in assessing whether you have deliberately deprived yourself of assets.

What should I do?

Get some advice on the options available and what implications future care would have for you. There are many choices, for example, a care annuity, creating a family

trust, or effective succession planning via a Will. Getting information now can help you to make an informed decision about your future needs. I would recommend you see both a Solicitor and a Financial Advisor who specialise in elderly clients to advise you on the implications of your actions.

When is the right time to consider future Care?

I would recommend on approaching retirement. We often think about who will sort out our affairs when we die but we don't always consider what should happen should we require support in our later years.

As a minimum I would advise making Lasting Powers of Attorney for both Financial and Welfare affairs. If care did become a need in later life and you haven't planned for it your attorneys would be able to step in and manage your affairs. They could put in place an appropriate care package, having the authority (subject to your capacity) to liaise with social services and the Primary Care Trust (PCT), and organise your finances to meet your requirements.



For further information please contact

Jane Flaherty on
01772 220022 or email
jane.flaherty@forbessolicitors.co.uk



Name: Maureen Nicholl
Position:
Solicitor in the Wills,
Trusts and Probate Team

Meet the team

What does your job involve:

In summary advising clients on making Wills and Estate Planning and drafting documents; administering estates; drafting Lasting Powers of Attorney documents; dealing with applications to the Court of Protection; dealing with the financial affairs of clients either under a Lasting Power of Attorney or under an Order issued by the Court of Protection; also dealing with elderly client issues.

What is the first thing you do when you get into the office?

My first task is to switch on the computer, make a cup of coffee and then deal with the e-mails, telephone calls and post.

What is your favourite part of your job?

There are many aspects of the job which I love but one in particular is the wealth of characters that I meet.

If you weren't a Solicitor, what would you be?

As I like driving I would like to be a Formula 1 Driver!

What do you do when you're not in the office?

I am an outdoor person and I go walking in the hills and mountains. I am presently doing the Wainwrights. When I am not walking, I cycle in the local area.

The content of this newsletter is merely informative and should not be relied upon as a substitute for legal advice.
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Blackburn office t: 01254 54374 **Chorley Office t:** 01257 260600
Preston office t: 01772 220022 www.forbessolicitors.co.uk

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