

**POINTS FOR COUPLES TO CONSIDER WHEN REVIEWING OR
 PUTTING IN PLACE WILLS
 (TAX YEAR 2019/2020)**

Intestacy

If there is no valid Will in place, then on the first death with a spouse\civil partner surviving, the spouse\civil partner will be entitled to the following assets of the deceased (other than jointly owned assets, which will usually pass automatically to the surviving joint owner):

<i>Surviving next of kin of the deceased</i>	<i>Spouse's\civil partner's entitlement</i>
1. Spouse\civil partner and children (assuming estate is over £250,000)	(a) Personal Chattels to include household chattels and effects. (b) Statutory legacy of £250,000. (c) Absolute interest in half of the residue.
2. Spouse\civil partner but no issue (regardless of whether the deceased leaves parents, brothers and sisters and their issue).	Whole of the estate.

The intestacy rules are not a substitute for a Will and may result in the estate passing totally out of accord with the deceased's wishes.

Wills

1. Marriage or entering into a civil partnership automatically revokes your existing Will unless your Will was made in contemplation of that marriage/civil partnership.
2. Is your spouse\civil partner\partner to inherit absolutely for them to deal with as they please or should their entitlement be placed in trust to ensure that the capital passes to the children (or other designated beneficiaries) on the second death?
3. At what age should children/grandchildren become entitled to capital – 18 or older?
4. Who is to inherit your estate if there is no surviving spouse/civil partner/partner, children or grandchildren?

5. If your children are under the age of 18 when you both die who would you like to be their guardians?
6. Does your Will make adequate provision for the distribution of your jewellery, furniture and personal effects?
7. Is it necessary to protect the inheritance of a beneficiary because of their own disability or the risk of claims by creditors or a divorcing spouse\civil partner?
8. Who are to act as your executors to carry out the terms of your Will on the first death and the second death?
9. Would you prefer to be buried or cremated?

Inheritance Tax Planning

1. Lifetime Gifts

- (a) Are you utilising all the available exemptions and reliefs?
- (b) Have you arranged for life policies, pension plans and death in service benefits to pass outside of your estates?
- (c) If you are faced with a prospective charge to Inheritance Tax and can afford to make a gift, that gift will escape any charge to Inheritance Tax under current legislation provided you survive the gift by 7 years. You can determine whether or not the gifts are to be absolute or in trust for the donees. It is important that you do not reserve any benefit in what is gifted.

2. Wills

In many circumstances, it is now possible for married persons and civil partners to leave up to £950,000 free from Inheritance Tax on the second death.

The rules introduced by the Finance Act 2008 apply on the second death, allowing executors to not only utilise the deceased's nil rate band of Inheritance Tax ("NRB"), which for this tax year is now £325,000, but to also claim any available nil rate band from the first spouse or civil partner to die.

The proportion of unused nil rate band from the first death is applied as a proportion of the nil rate band applying on the second death. Thus, if 90% of the nil rate band was unused on the first death, in say 1988 when the nil rate band was £110,000, the Executors can claim this 90% – not of the £110,000, but of the current nil rate band of £325,000 (i.e. £292,500).

In addition to this, as from 6th April 2017 a new element known as the residence nil rate band ("RNRB") can be claimed. This is, however, not available to everyone. It must be reviewed on an individual basis.

It might be beneficial to structure ones Wills to utilise the NRB and RNRB on the first death. It might be that leaving an inheritance to your intended beneficiaries on the first death would benefit them to a greater extent than leaving something to them on the second death.

3. *Post Death Variations*

Within 2 years of death a beneficiary can redirect an inheritance to a third party and elect to have the redirected inheritance treated as though it came direct from the deceased, thereby avoiding the usual requirement for a donor to survive such a gift by 7 years in order for it to escape any charge to Inheritance Tax.

4. *Exemptions and reduced rate of Inheritance Tax*

- (a) Gifts to spouses or recognised Charities by way of lifetime gifts or under Wills or post death variations are usually exempt from Inheritance Tax without limit.
- (b) Since 6 April 2012 any estate which leaves at least 10% to a charitable cause will be able to take to advantage of a reduced rate in Inheritance Tax, from its current level of 40% down to 36%.
- (c) Properly structured gifts/legacies of farmland, business interests and shares in unquoted trading companies can qualify for generous reliefs from Inheritance Tax.

Living Wills/Advance Directives

In what circumstances, if any, would you not want to receive any further medical treatment?

From October 2007, the Mental Capacity Act 2005 gives clear legal status to advance medical decisions, which means health professionals will now have to follow them provided they are valid and applicable to the specified treatment.

Lasting Powers of Attorney (LPAs)

Who would you want to manage your property and finances should you become physically or mentally incapable of managing them yourself during your lifetime?

Would you want to place any restriction on what your attorney(s) can deal with or when the attorney's powers should come into operation?

Do you want someone to be able to make welfare and health care decisions on your behalf when you lack mental capacity to do so yourself?

An LPA can address these issues.

FURTHER ADVICE

The above information is a general summary of important areas to consider. Please note that Godwins Solicitors LLP has not undertaken a review of your Will, so such information should not be construed as legal advice and is not a statement of the law. Godwins Solicitors LLP does not accept responsibility for any action which you may take as a result of the information provided above and we strongly recommend that you obtain specific professional advice, relating to your individual circumstances, before you take any action.

We would be pleased to advise further. If any of the above points are relevant to you then please contact either:

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Home visits can be arranged. We give an indication of costs on our website for certain types of work and will confirm a cost estimate with you following our initial consultation.