

# Will Trusts - are they still useful tools?

**Will trusts are a way in which assets can be passed on when a person dies, without giving legal ownership to one's beneficiaries. Legal ownership, and therefore control of the assets in the trust, remains with the trustees until they decide to distribute funds to the beneficiaries.**

## **Inheritance Tax**

Will trusts were commonly used to allow married couples to use both Inheritance Tax (IHT) Nil Rate Bands (NRB) and still allow the survivor access to the deceased's share of the estate. Since 9<sup>th</sup> October 2007, any NRB unused by the first to die can be claimed on the second death, so simply from the point of view of the NRB and for joint estates totalling less than two NRBs (currently £650,000), will trusts may no longer be necessary.

For larger estates, however, and for widow(er)s who remarry, will trusts can be still be used as a very effective IHT planning tool. The mechanisms are beyond the scope of this document, but suffice to say that there are opportunities to plan using the family home and gifting that are not available unless a will trust is set up on the first death.

There are, however, other reasons for using will trusts, which are of interest not only to the very wealthy.

## **Control**

One major reason why someone might still use a will trust is to control who gets their estate, and when.

The first point to note under this heading is that a will trust does not take effect until a person dies. This means that the assets which the person intends to place into trust remain in his or her own control and ownership as long as he or she lives. This is in contrast to a trust set up by gifting money during one's lifetime; as a general rule, any money put into trust in this way is no longer accessible to the settlor. There are ways round this, but they usually involve some degree of compromise in access or effectiveness.

And then the deceased can have a say in who gets his or her money from beyond the grave, to a certain extent. The point here is that the ultimate intended beneficiaries do not receive absolute ownership of the assets in the will as long as they remain in trust. There are any number of reasons for doing this:

- The beneficiaries might be young, or inexperienced in handling money, and the settlor might want them to attain a certain age, or demonstrate a level of financial maturity before getting the money absolutely;
- The settlor might be concerned about the state of the marriage of one of the beneficiaries, and may wish to prevent some of his or her estate forming part of any divorce proceedings and passing out of the family;
- The settlor may want to protect his or her own children's inheritance against the remarriage of a spouse.

These examples are not exhaustive, but serve to give a flavour of the reasons why someone might not want his or her assets going absolutely to beneficiaries.

There is nothing to stop the trustees advancing some money, perhaps any income arising, to beneficiaries. A will trust is not a complete ban on any beneficiary getting any money whatsoever.

The deceased can exercise a degree of post mortem influence by writing a letter of wishes to the trustees. While not binding on the trustees, it does give them guidance on what the settlor had in mind in setting up a will trust rather than giving the money absolutely.

### **Long Term Care**

Married couples can protect the survivor against some of the effects of having to pay for long term care, should he or she require it.

If a person has assets – and that includes the value of the family home – valued at more than £23,250\* then any care fees will have to be paid for privately. If a person leaves all their assets absolutely to the surviving spouse, then all of those assets are potentially at risk of having to be sold to pay for care. A will trust can help.

First of all, any assets of the first to die, because they are in trust and therefore not in the ownership of the survivor, will not be taken into account at all and will therefore be completely protected.

Any assets in the surviving spouse's own name are potentially at risk, but it is possible to protect the family home, also using a will trust strategy. The legal ownership of the house should be arranged in such a way that the first to die can dispose of his or her half of the property (the technical term is 'tenancy-in-common') and should include this half in the will trust. On first death, the survivor does still own half the house and, if care is required it will be taken into account, however, the value of half a house is not the same as half the value of a house, because the survivor cannot sell the property without the agreement of the trustees. Under the Charging for Residential Accommodation Guidelines (CRAG) the value of half a house owned in this way is negligible and can be argued to be zero. Thus the survivor's half of the house is protected also.

### **Summary**

**Estate Planning involves so much more than reducing the Inheritance Tax liability. We believe that will trusts are still a powerful tool in one's estate planning armoury.**

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\*In Northern Ireland and England, as of August 2011

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