Estate planning: issues to consider for your family's future

Patricia Milner, Partner, Withers LLP discusses the importance of will planning

Whilst most people understand the importance of having both a will and estate plan to safeguard their family's future, all too often, making a will remains on the ‘too difficult’ pile.

Estate planning requires an up-to-date, tax-efficient will which reflects your wishes and consideration of a number of related matters, such as ensuring your pensions and your life insurances are held in the most tax-efficient way, and making provision for the consequences of a possible future loss of mental capacity.

It is crucial to obtain good quality advice in this area. To best utilise the advice you are given, it is also vital to think through the issues concerning your family and decide on your priorities.

COMMON CONCERNS TO CONSIDER BEFORE DRAFTING A WILL:

- Who will look after my children if both my spouse/partner and I die prematurely?
- How can I prevent my children inheriting too much too young?
- How can I be confident that my spouse/partner will be properly cared for when I am gone?
- Have I done everything I can to minimise the inheritance tax burden on my family?
- What happens if I become too ill to make important decisions, or my parents lose capacity to do so?
- How can I protect my assets if one of my children divorces?
- What if my spouse/partner remarry after my death – will my children’s inheritance be protected?

Most of these issues can be addressed with a properly drafted will. If you die without making a will, UK intestacy rules come into play. In a situation where you die and are survived by a spouse/partner and children, your spouse receives only the first £250,000 plus half of the remainder. The other half passes to the children equally, at the age of 18.

These rules are very unlikely to reflect your wishes, and may easily give rise to a significant and quite unnecessary tax bill – which, in the event of your unexpected death, could fall at the worst possible time.
Preparing a will

The main issues which should generally be considered, and on which good advice is essential include your:

- Choice of Executors/Trustees (especially important if your children are still young)
- Appointment of Guardians for young children
- Legacies of cash or personal items
- Effective use of the Inheritance Tax (IHT) nil-rate band
- Effective use of IHT reliefs, for example for business property
- Effective use of the spousal/civil partner exemption from IHT via outright gifts or gifts into trust
- Tax-efficient use of flexible trusts which allows you to benefit children at the appropriate age and avoid giving them too much at too young an age

Inheritance Tax, Pensions and Lasting Powers of Attorney

Inheritance tax applies to the worldwide estate of anyone who dies domiciled in the UK. You will be charged inheritance tax at a rate of 40% on any value of an estate over £325,000 (plus from April 2017 an additional allowance of up to £175,000 is available where your house is left to your children/issue, or, where you have downsized, cash passes to children/issue). It is therefore, a substantial liability.

However, assets given to a spouse or civil partner are usually exempt from Inheritance Tax (IHT), and the IHT free band is transferable between them. The new amount to set against the house value will also be transferable. Furthermore, shares in unquoted trading companies, in AIM listed trading companies and EIS investments, interests in trading businesses, and agricultural property including let agricultural property, may all be wholly free of IHT. These features taken together can be used to real advantage, achieving significant tax savings for your family and safeguarding your wealth. To best utilise these reliefs, and to achieve other aims such as to protect the children’s inheritance via the use of a trust, a properly drafted will is vital. For example the new residence exemption is potentially of great value to many families; however the implementation of this legislation is extremely complex and opaque, so it may not be available if the will is not in the right form.

Your estate plan should also incorporate the issues arising for you and your family from the changes to the tax treatment of pensions and the greater flexibility now available, alongside taking steps to address any decline in your mental or physical condition in years to come.

Lasting Powers of Attorney (LPAs) have been developed to help you and your family manage the consequences of such an event. Under an LPA, you can appoint someone (your attorney) to take decisions on your behalf in the event that you are no longer able to do so.

Wills, IHT, pensions and LPAs are all stark reminders of mortality. No one enjoys thinking about them. But not thinking about them is worse.

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