PRIVATE CLIENT SERVICES

UHY Hacker Young
Chartered Accountants

LEAVING YOUR AFFAIRS IN ORDER

The very act of having a Will drawn up can be beneficial in that it makes you think about what you have and what you want to happen to it.

While most of us find it difficult to think about our mortality, the fact is that one day we will be gone and that someone (family, friend or perhaps a professional adviser) will have to deal with what we have left behind. We owe it to them to make that task as easy as we can.

You should think about:

1. WRITING A WILL

If you do not leave a valid Will, the rules of intestacy will apply in respect of your estate (your 'estate' is defined as assets less outstanding liabilities). If your estate is very small this may not matter and there are circumstances in which the result might be perfectly acceptable (for example, if the value of your estate is such that it will pass wholly to a surviving spouse or children). In most cases, however, it still makes sense to have a Will drawn up. Note in particular that the rules of intestacy do not provide for 'common law' spouses. If you do not provide for them via a valid Will, they may be obliged to make a legal claim against your estate (and may be seriously short of funds in the meantime).

The very act of having a Will drawn up can be beneficial in that it makes you think about what you have and what you want to happen to it. For example, whether you want to protect certain family members (such as minor children or those who will struggle to manage their affairs), whether you want certain interests to take priority (for example, giving a second spouse or civil partner a right to remain in occupation of the family home for the rest of their life), whether you want children or grandchildren to benefit equally (or for any inheritance to be adjusted to reflect lifetime gifts), whether you want to benefit charities and whether it would be appropriate to consider some tax planning (see below).

In addition to a Will you can write a letter of wishes. This is not legally binding but you can use it to deal with the small stuff – for example, your preference that the painting in your bedroom should be offered first to your cousin David – and more significant matters such as the factors you would want trustees for your children to consider in exercising their discretion. You might also want to guide your executors towards professional advisers who you think would be best placed to deal with particular aspects of your estate or the estate as a whole.

Talk about your Will to those who will be affected by it. You can name people as executors without their prior consent but they can refuse to act when the time comes. Check that they are willing, tell them why you have chosen them, and make clear why your Will says what it says and what your wishes are in respect of any matters not covered in the Will. Tell them where your Will is kept.

If the terms of your Will are likely to lead to arguments within your family, think very carefully about the impact (and the legal costs associated with any challenge) and whether it makes sense to explain things in a covering letter (or face to face while you have time). Think carefully about your choice of executors. While family or friends are usually a good option, there are circumstances – for example, if you have business interests, if family conflicts are expected, or if there is simply no-one else appropriate – where the appointment of one or more professional executors may make sense.

If you already have a Will, make sure you keep it under review. Are your chosen executors still the right people? Are they still alive! Have your wishes changed in any way? Have your family circumstances changed (bear in mind

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that marriage usually makes a Will invalid and that divorce makes any bequests to your ex-spouse/civil partner null and void). Minor amendments to a Will can be achieved via a codicil. More wholesale changes call for a new Will (which, assuming it is valid, then takes priority over your old Will).

2. MAKING CLEAR YOUR WISHES REGARDING ORGAN DONATION AND FUNERAL ARRANGEMENTS

We can not bind family or friends in terms of funeral arrangements or, at present, organ donation. However, we can leave a written note of our wishes (most obviously either in or with our Will), we can sign up to the organ donor register and carry a donor card, and – most importantly of all – we can talk to family about our wishes and the reasoning that lies behind them.

3. KEEPING RELEVANT PAPERS IN ORDER AND IN A SECURE PLACE

It is essential that Wills are kept secure, whether in a professional adviser's safe or at home (perhaps in a fireproof box). Your executors, however, are going to need access to far more. They will need to determine your assets and liabilities on death and, if Inheritance Tax (IHT) is an issue, investigate any gifts in the seven preceding years. Why not leave them lists, together with relevant papers (life policies etc) and contact details? Don't forget premium bonds.

Also leave a note of relevant contact details – your accountant, your solicitor, your bank, any investment manager, details of pension and life policies.

4. ENSURING THAT THE IMMEDIATE NEEDS OF FAMILY WILL BE MET

Assets that are owned jointly (including properties held as joint tenants) pass to the survivor automatically on death. Most other assets, however, will be frozen until a Grant of Probate has been obtained (a process that invariably takes several months). Ensure that your spouse/civil partner or any adult child who is dependent on your support has sufficient funds in a bank account of their own or in a joint account to meet their immediate needs.

Think about whether life insurance might be appropriate as a way of supporting your family after you are gone (note that life insurance is typically 'written in trust', which means that the proceeds can be released before Probate has been obtained).

5. TIDYING UP YOUR FINANCIAL AFFAIRS

The more complicated your financial affairs, the greater the headache for those you leave behind. Try and make things as simple and transparent as you can. Go through your documents and either dispose of or identify those that are no longer valid. If you have a lot of share certificates (admittedly a rarity these days), look at registering your holdings electronically via a low cost broker. If there are matters that should have been disclosed to HMRC, think seriously about disclosing now and getting everything cleared up (you might sleep easier as well).

6. TAX PLANNING

Inheritance Tax is not, as some suggest, an optional tax but advance planning can often have a significant impact on the bill. If your estate passes to a surviving spouse/partner (or to charity) IHT is not likely to be an issue. On the second death the first £325,000 ('the nil-rate band') of your estate is likely to be free of tax, you may benefit from an additional £325,000 if a spouse has pre-deceased you and those dying after 5 April 2017 may benefit from an additional exemption in respect of the family home. However, if you have remained single, have divorced and not remarried, or are in a common-law relationship, the exempt amount may be just £325,000 and, if you have made substantial lifetime gifts, this may not be available to set against your estate at death. Any value not covered by reliefs or exemptions is charged to tax at 40%.

Do not make assumptions. The fact that you are ten years older than your wife and in poor health does not make it inevitable that you will die first (leaving her to deal with any issues of inheritance and tax). Also do not assume that your estate will benefit

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from the maximum tax-free allowances. In particular, the planned additional exemption in respect of the family home is only available in certain circumstances – the wording of your Will and your planning may need to be reviewed to ensure you benefit.

7. YOUR DIGITAL LEGACY

A recent addition to the list but one that should not be forgotten. The question of whether you should leave a note of bank passwords is a difficult one – far better to ensure that, as noted at item 4 above, any dependants have ready access to funds in the event of your sudden demise. There are other items, however, such as e-mail passwords and passwords/IDs for social media accounts that you may want to jot down and leave in a secure place.

8. A LASTING POWER OF ATTORNEY

All of the above relate to what happens when you die. There is a distinct possibility, however, that you will lose capacity to deal with your affairs well before that point. Lasting powers of attorney ('LPAs') are intended to fill the gap – they are a legal document under which you appoint one or more persons to deal with either or both of your financial affairs and your health and welfare in the event that you are no longer able to deal with things yourself. An LPA is important. It should be drawn up while you still have full capacity (they are often dealt with at the same time as a Will). Bear in mind that incapacity could be triggered by an accident or a sudden illness, rather than gradual decline.

WHAT NEXT?

Talk to your usual UHY adviser – or contact Graham Boar below – if you could benefit from help with any of this. We can advise on the content of Wills and letters of wishes and recommend a solicitor to draw up these documents and a lasting power of attorney. We can act as executors and advise on IHT planning. In the event of the death of a friend or family member we can help you to deal with financial institutions, prepare IHT returns and prepare and submit the application for probate (either under our own licence or via a recommended law firm). We can assist you with the tax position of the deceased and with tax planning in respect of any inheritance. Last but not least, whatever the circumstances, we are there as someone to talk things through and guide you in an appropriate direction.

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FURTHER INFORMATION

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