

# Plan your succession.....

and then get on with your life



At a time when they will be devastated, your good planning will help your family.

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## Introduction

Throughout my many years as a Financial Planner, I came across scores of people who had financial aims and objectives. I listed them as I had been trained and looked for areas that I could assist them.

I asked all of these people if they had a will and if they had planned what would happen in the unfortunate event of them dying. I have to say that an overwhelming majority (I suppose about 98% or so) indicated that they had not.

Well, as I was not tasked with serving this need, I merely did what I was trained to do and very sternly and formally announced "I am tasked to stress to you that you need to take the steps to have a will written so that those that follow you can take care of your estate" - and then I moved on to other issues.

I very much doubt that many of these people heeded my words.

Some time ago, I decided that I no longer wanted to be in financial services. The regulation was becoming prohibitive, the paperwork a nightmare and the Financial Services Authority were effectively taxing me out of business. So I left to do something else.

I decided to move to include in my portfolio of services, the job of will writing. But as I was not an expert I did not wish to actually create the very complex services myself, but I would seek out the best provider of such services and I would make as sure as I could that as many people as possible would have their affairs put in order.

So, this is why I decided to get into the Will writing and associated business and why I wrote this booklet to inform people of what is available to them.

It is my intention to ensure that this book is revised each year and so I ask you to ensure that the current year is displayed at the foot of each page. If you do not have an up to date version, then please email me at:

[admin@regencywills.co.uk](mailto:admin@regencywills.co.uk)

or visit

[www.regencywills.co.uk](http://www.regencywills.co.uk)

.....and I will send you an up to date copy as soon as I can.

Thank you and enjoy the read....

**Alan Hill - Will Writing and Trust Planner**

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# Section 1 - Wills

## 1.1 Why do I need a Will?

The vast majority of people put off making a Will for a variety of reasons, either believing that the people they would wish to inherit will automatically do so, or because they don't think it is relevant to them at this particular time.

The reality is that you can put off making a Will until it is too late and this poses all sorts of problems for the people left behind and could mean that some or all of your inheritance either goes to the wrong person or to the state..

## 1.2 Affording you Peace of Mind

Firstly and most importantly is the peace of mind making a Will provides.

Making a Will enables you to plan exactly what will happen to your property (estate) following your demise. This ensures that those you would like to benefit actually do so, in accordance with your wishes and at the same time avoiding any possible disputes between relatives.

## 1.3 Who needs to make a Will?

The answer is **Everyone**. In particular, anyone with dependant relatives, (children under the age of 18, elderly relatives or relatives with a disability who have special needs), anyone who owns property or has any type of asset which you would wish relatives, friends or charities to benefit from.

## 1.4 But won't everything go to my husband / wife / civil partner/ parents / children etc automatically?

This is a common misconception and dependant on the size of your estate, there are set rules which will be applied to determine who inherits and how much if you do not make a Will.

## 1.5 So what happens if I don't make a Will?

This is called dying **'Intestate'** There are specific rules of intestacy which set out who will inherit and by how much if you do not leave a valid will, this may not be what you would have wished and in the worst case scenarios where relatives cannot be traced, your assets will be taken by the Crown.

Please see the diagram on page 9 to visually see what happens.

## 1.6 Who can make a Will?

Quite simply anyone over the age of 18 who is of sound mind however:

- it is possible for members of the armed forces to make a Will under the age of 18 (advice should be sought in these circumstances)
- under the provisions of the Mental Health Act 1983, the Court of Protection may approve the making of a Will, or a Codicil to a Will for someone who is mentally incapable of doing so themselves. Guidance about how a mentally incapable person can make a Will can be obtained from the Public Guardianship Office website:  
<http://www.publicguardian.gov.uk/> Court of protection page.

## 1.7 What happens if I don't make a Will?

This is called dying 'Intestate'. There are specific rules of intestacy which set out who will inherit and how much, if you do not leave a valid will, this may not be what you would have wished.

Again, please see the diagram on page 9 to visually see how this works.

## 1.8 Is making a Will difficult?

No. You need to make a list of your property and assets and consider who you wish to benefit from your estate, ensuring provision has been made for dependant relatives. You should also consider who you would want to look after your children '**Guardians**' if they were still young.

## 1.9 What makes a Will valid?

- it should be in writing, appoint someone to carry out the instructions of the Will (an '**Executor**' and dispose of possessions / property
- it must be signed by the person making the will (the Testator), or signed on the testator's behalf in his or her presence and by his / her direction. This must be done in the presence of two witnesses who must sign the will in the presence of the Testator

## 1.10 Who can be a witness?

Anyone who:

- is not blind
- is capable of understanding the nature and effect of what they are doing
- is aged 18 or over

A witness should **NOT** be:

- a beneficiary in the will
- married to, or be the civil partner of a beneficiary

In these circumstances the Will remains a valid and legal document, but the gift to the beneficiary cannot be paid.

## 1.11 Can I state what happens to my body in my Will?

Lots of people shy away from discussing their funeral arrangements with family and friends, so making a Will is a good way of letting people know whether you wish to be buried, or cremated and any specific requests you might have for your funeral service.

However, it should be noted that your Executors are under no obligation whatsoever to carry out funeral wishes requested in your will.

One way to guarantee your wishes are met is to set up a Guaranteed Funeral Plan (see Section 9 for more details of this), you can include details of these arrangements in your will.

## 1.12 Rules of Intestacy

If you do not leave a valid will your estate will pass in accordance with the **'Intestacy Rules'**.

The intestacy rules set out who is entitled to inherit from your estate if you do not leave a valid will. If you do not leave a Will your money and possessions will be distributed according to the intestacy rules laid down in the Administration of estates Act 1925. If you have no relatives the Crown is entitled to take everything.

If you are married, or in a civil partnership, the first person entitled to your estate under the intestacy rules is your spouse / civil partner, but he or she will not necessarily inherit the whole of your estate. (The Civil Partnership Act 2004 came into effect on 5th December 2005 and gave same- sex couples the right to register their partnerships, giving them broadly the same legal rights as married couples).

The amount your spouse / civil partner would inherit depends on how much is in your estate and which of your blood relatives survive you. Assets held in joint names usually pass automatically to the other joint owner(s) and do not form part of your estate (if you are unsure about the type of joint ownership you share with another, you should consider seeking legal advice).

## 1.13 The intestacy rules in a simplified form

Other things you should consider about the effects of the intestacy rules:

- If any of the following circumstances apply to you, the intestacy rules may not cater for your situation in the way that you would wish:
- you are living together but are not legally married or in a civil partnership but wish your partner to inherit some or all of your estate
- you are legally married or in a civil partnership and have children and you wish your spouse / civil partner to inherit all of your estate
- you have no living relatives and wish to leave your estate to your friends or to a charity
- you are legally married or in a civil partnership but have no children
- you are legally married or in a civil partnership and don't wish your spouse / civil partner to inherit anything
- you are legally married or in a civil partnership and have children from a previous relationship and you wish to ensure that your children receive something from your estate
- you have dependant relatives eg. Children under the age of 18, elderly relatives or relatives with a disability who have special needs and you want to make sure that they are looked after and provided for. (If you make a Will you can appoint guardians to look after your children and set up trusts in your Will to provide for dependants)
- your estate is large and may be liable for Inheritance Tax and you may wish to make arrangements for tax planning

## 1.14 In a Nutshell

If you die without a Will and have a surviving spouse or civil partner:

- if you have no surviving children or other relatives, everything goes to your spouse or civil partner
- if you have surviving children, your spouse or civil partner gets the chattels (personal belongings, household goods, jewellery, antiques and paintings). They will also receive the equity in the estate – up to a value of £250,000 and a life interest in half the remainder of the estate. This means that the capital is held for your children, who will receive it when your spouse or civil partner dies. Your spouse or civil partner will receive the interest for as long as he or she lives. The other half of your estate will be given to your children immediately, or held for them in a statutory trust until they reach the age of 18
- if you have no children or grandchildren but your parents survive you, your surviving spouse or civil partner gets the chattels, the first £450,000 of any savings or property and half the remainder. Your parents get the other half. If you have no surviving parents, any surviving brothers or sisters will

receive their share unless they are under 18, in which case it will be held in a statutory trust until they reach that age

### **1.15 Statutory Trust**

Under a statutory trust, part of the estate (once the spouse or civil partner has taken his or her fixed share) is held for children or other beneficiaries until the death of the spouse or civil partner. The spouse or civil partner receives the income for the trust for life.(England and Wales Only.)

### **1.16 No surviving spouse or civil partner**

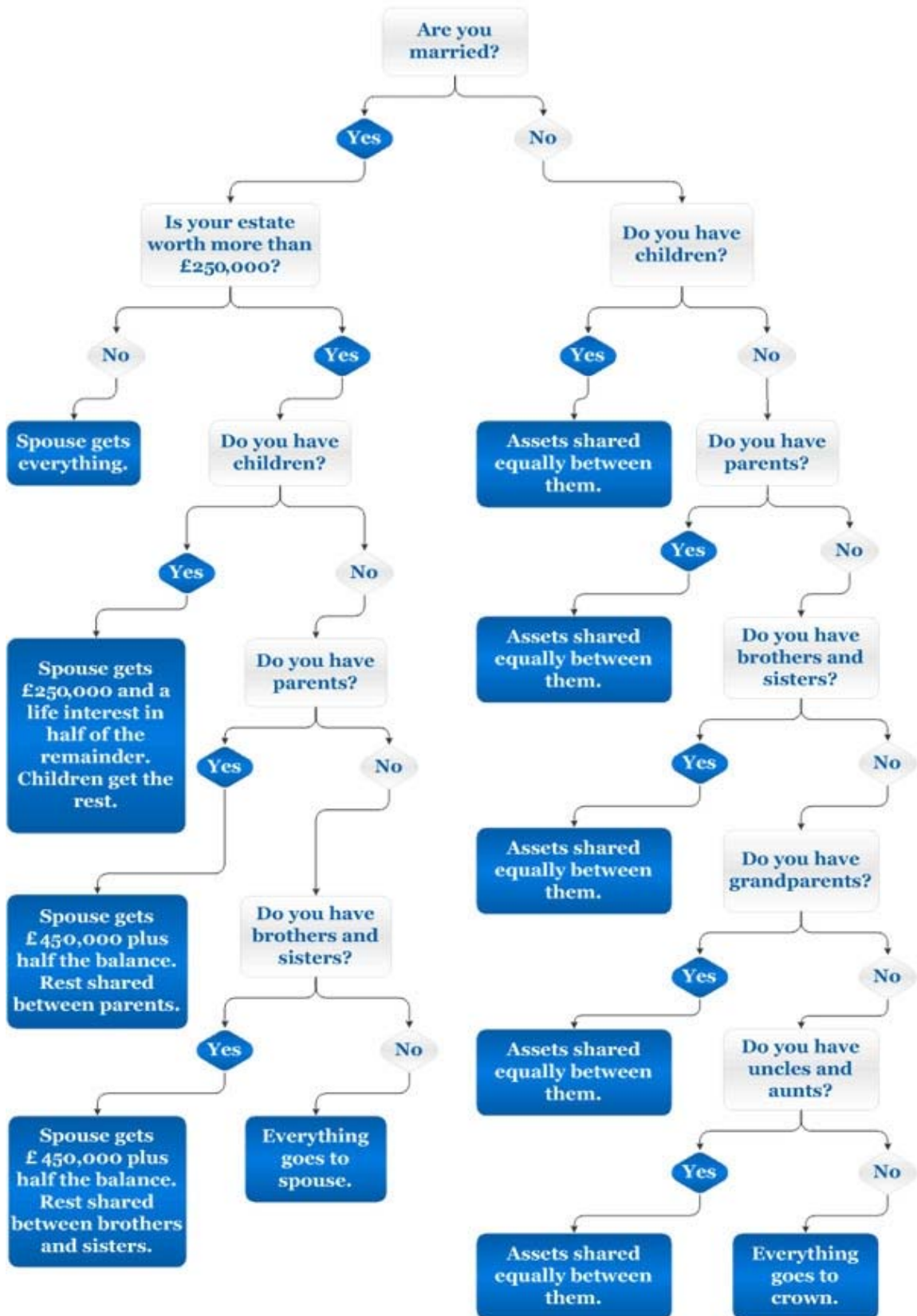
Your children will share everything. If any of your children have not survived, their own children (ie your grandchildren) will inherit their share.

### **1.17 No surviving children or other direct descendants (including great grandchildren)**

Your estate will be inherited by your other relatives in the following order:

- your parents
- your brothers and sisters of the whole blood, or their children if your siblings have not survived you
- your brothers and sisters of the half blood, or their children if there is no surviving parent
- your grandparents
- your uncles and aunts of the whole blood or their children
- your uncles and aunts of the half blood or their children
- the Crown

1.18 Here is how the Intestacy Rules work.....



## 1.19 Guardians

The role of a guardian is a very important one if you have children. Should you die without making a Will or if you do not appoint guardians in your Will, your children could be placed in care until the court appoints official guardians to look after them. This could take months and would obviously result in distress for your children and other members of your family. Appointing guardians safeguards against this happening.

Remember to request that your appointed guardians also make a Will themselves to further safeguard the future of your children.

## 1.20 Who should act as guardians?

### Friends or Family?

You will need to consider who should be the guardians of any children under the age of 18 years who may survive you. The law has certain requirements particularly where the parents are unmarried or have divorced or separated.

Assuming that either parent has the power to appoint a guardian or guardians on their death, it is usual for such appointments to take effect on the death of the second parent.

The normal choice is to appoint family members, particularly where very young children are involved. As children grow the appointment of friends may be more appropriate as they are more likely to share your lifestyle and in these modern times live nearer than your family.

It is usual (but not essential) that the same persons are appointed guardians of all the testator's minor children. When the guardians are to act only after the death of the surviving parent it is desirable that each parent should appoint the same persons to act as guardian.

It is, of course, important that the testator should obtain the consent of the proposed guardian before making the appointment.

Although each parent can appoint different guardians, it is worth remembering that both will legally act in the event of your death so depending on who you have chosen will have an effect on your children's future.

You can also appoint different guardians for different children but this may mean splitting them up. Guardians have to ensure adequate contact between the children is maintained but you may not be happy having your children divided in any way.

## 1.21 Who cannot appoint guardians?

Unmarried fathers who don't have parental responsibility cannot name guardians, neither will they necessarily become guardian should the mother die. If they wanted to ensure that they did, it would be necessary to enter into a written agreement to share responsibility with the mother, or apply to the court. It would be possible for unmarried fathers to become guardians if appointed by the mother or by marriage.

## 1.22 How many Guardians?

There is a danger where the appointment of family is being considered to appoint a 'committee' of all the grandparents or brothers and sisters. This has its obvious disadvantages in that the most important issue, the well being of your children, may at worst get overlooked and at best be difficult to manage. It is best to limit the maximum number of guardians to two and it is preferable that they share a home as partners. Thus your children will become part of a familiar and stable environment at probably the most difficult time of their lives.

By all means appoint substitute guardians as this will ensure continuity if circumstances change.

## 1.23 The Guardian's duties

The duties of a guardian are essentially the same as those of a parent. They are responsible for the day-to-day upbringing of your child and would stand in your shoes in that respect. The organisation of holidays, birthday presents and all the everyday things that we take for granted.

The terms of the Will should be such that the executors and subsequently trustees can do all that is necessary to assist in financial terms. The expression of your wishes in an informal letter to the trustees is often an easier way of ensuring that your child or children are brought up, as you would wish. However, a word of warning, do not try to enforce too rigid a routine either in the letter or in your Will, as times change and so do your children. It would make the guardian's job even harder, for instance, to impose the attitudes of even ten years ago at this time!

## 1.24 The Implications

The role of the guardian is a very responsible one and should not be entered into lightly. There will be financial, social and emotional implications taking on such a vast role and the matter should be discussed in detail between the Testator and the appointed guardians.

Many parents will provide financial support for their children in the event of their death and although it may seem insensitive to question them about this, it is a factor in making your decision.

You may be able to claim child benefit and receive a guardian's allowance in the event that both parents are deceased. Where one parent is alive and you are still called upon to act as guardian the situation will obviously be more complicated.

There are circumstances under which the guardian will be called upon when both parents are not deceased in cases where:

A surviving parent is unable to perform their role because they are overseas, in the army, in prison, disabled or mentally incapacitated, or after the death of the first parent, or they just refuse responsibility.

A couple are separated or divorced and just one of the parents die. The guardian will act with the surviving parent and should disputes arise they will have to be settled by the court. The surviving parent is still considered the statutory guardian.

## 1.25 Financial considerations

It is normal for the financial management to be separated from the day-to-day upbringing of children. Whilst the guardians have the daily responsibility it is better for the financial control to be handled by someone different, normally the trustees of your estate. The two tasks demand different skills that may not always be found in the same person. It also means that the trustees, the guardians and, when they are old enough, your children, can share what can be difficult decisions.

In your Will, where your children are underage and are to benefit from your estate, you should nominate them as the beneficiaries. In no circumstances should you nominate the Guardians – as mentioned above, the money will be held in trust, and will be controlled by the trustees for the benefit of the children.

The appointment of testamentary Guardians for children allows you to decide who should be responsible for your children's welfare, maintenance and education, and how these should be funded if both your deaths occur while any child is under 18 years of age.

Nb. The expression 'testamentary guardian' merely indicates that the guardian has been appointed by a Will.

There is no legal reason why you cannot appoint the same people as executors, Trustees and Guardians if you wish, but you should be aware that there is a

potential conflict of interest in that the trustees are responsible for advancing sums of money held in trust to the Guardians to help with guardianship duties. However, if you have absolute trust in the people appointed then do not allow this to concern you.

Do consider factors such as the age of your Guardians, where they live in relation to you, (would children have to move school etc.), how close is the relationship between your Guardians and children now, and do your Guardians know and share your views on how your children should be raised and educated etc.?

## 1.26 Duties of Guardians

1. you may be appointed to act jointly with guardians. If called upon, you may already have agreed which part of the child rearing role you will undertake – or you may need to decide this at the time with the other appointed guardians
2. the surviving parent usually assumes full custody of minor children if the parents were married. Even if the parents were divorced the surviving parent is normally entitled to resume full custody of minor children; however this right will not necessarily be exercised – divorced testators may still choose to name friends or relations as the first choice for guardians. Unmarried fathers do not assume automatic custody rights unless a parental responsibility agreement is in place
3. the ultimate decision on who will act as guardians to minor children rests with the local social services. Naturally, they will try to abide by the wishes expressed in a legally valid Will whenever possible
4. guardians may also be appointed as executors and trustees in the same Will. It is useful if at least one guardian is also appointed to be an executor and trustee so that funds can be advanced most conveniently when required
5. guardians require the maximum flexibility for living arrangements and the use of funds. All normal requirements can be catered for with a comprehensive selection of Trustee Powers which should be included in a professionally drafted Will. Whatever is informally agreed with the parents at the time of the appointment, guardians should not commit themselves to specific arrangements which they may not be able to fulfil in the future

## 1.27 Further Legal Information on Guardianship

### Appointment of Testamentary Guardians

The appointment of guardians and the rights they have are governed by the Children Act 1989, s5. A guardian can only be appointed in accordance with that section. A parent with parental responsibility may appoint a guardian by Will

or by a document which he dates and signs and which provides that the appointment only takes effect on his death. The appointee will become the child's guardian if, at the death of the testator:

- A. no parent with parental responsibility survived him; or
- B. there was a residence order in his sole favour relating to the child.

If neither of these conditions is fulfilled, the appointee will not automatically become the child's guardian but, as he has parental responsibility, he will be entitled to apply to the court to be appointed guardian.

The appointed guardian can appoint a successor. It is, however, unnecessary to make express provision in the Will because the Children Act 1989, s5(4) enables a guardian to appoint another individual to take his place in the event of his death.

Whether guardians should be trustees depends on the circumstances of each case. There are arguments for and against. The guardians are best placed to know the needs of the children and have the task of providing for those needs. On the other hand, the guardians may be regarded as the advocates of the children and the trustees as the judges of their conflicting claims. The problem is particularly acute when the residue is held on discretionary trusts for the children and, in that case, a sensible solution may be to appoint one of the guardians and, say two professional trustees.

## 1.28 Parental Responsibility

Without prompting, clients rarely contemplate the appointment of testamentary guardians but invariably accept that such an appointment is highly desirable if both are to die while they have a child under eighteen.

Section 2(1) of the Children Act 1989 provides that where a child's mother and father were married to each other at the time of the child's birth, they shall each have parental responsibility for the child. This applies also to children born as a result of AID.

Where the child's parents were not married to each other at the time of the child's birth, only the mother has parental responsibility (s2.(2)) but the father may acquire it either by a court order or agreement with the mother under s4, or a residence order under s8:s12(1). If the father had already acquired a parental rights and duties order under s4(1), Family Reform Act 1987, this will automatically be deemed to be an order under s4 of Children Act 1989 (sched 14, para 4).

Parental responsibility may also be acquired by a guardian, a person with a residence order, adopters and local authorities where a care order or emergency protection order is in force. Section 5, Children Act 1989 provides

that a court may appoint a guardian if the child has no parent with parental responsibility or a parent or guardian with a residence order has died during the subsistence of the order. A parent with parental responsibility or a guardian may appoint another (or others (s5(10))) to act as guardian in the event of their death. Such appointment must be in writing, dated and signed by the maker or, where not so signed, signed at his direction and duly witnessed: s5(5). The section goes on to provide for the circumstances in which the appointment of the guardian may be revoked or disclaimed.

**NOTE:**

1. more than one person may have parental responsibility for the same child at the same time
2. where more than one person has parental responsibility for a child, each person may act independently without the other(s) in discharging that liability. This power is subject to any statute requiring the consent of more than person in any matter affecting the child
3. the fact that a person has parental responsibility for a child does not entitle him to act in a way incompatible with any order made in respect of the child under the 1989 Act
4. though a person who has parental responsibility may not surrender or transfer any part of it to another, he may arrange for some or all of it to be met by one or more persons acting on his behalf. A person acting on his behalf may already have parental responsibility for the child. An arrangement will not affect any liability the person making it may have as a result of failing to meet any of his parental responsibilities for the child concerned

## 1.29 Appointment

Under s.5 Children Act 1989 a person with parental authority may appoint one or more persons to be guardians to take effect on his death. The requirements for the appointment are that it must be:

- in writing
- dated and
- signed by the parent

(or in the case of an appointment by will which is not signed by the testator, it is signed at the direction of the testator in accordance with the requirements of s.9 Wills Act 1837).

## 1.30 Executors

An executor is the person responsible with administering a deceased person's estate in England, Wales and Northern Ireland. You can appoint an executor by naming them in your will. The courts can also appoint other people to be responsible for doing this job.

### 1.31 If the person who has died leaves a will

In this case one or more 'executors' may be named in the will to deal with the person's affairs after their death. Any number of executors can be appointed but only four can apply for the grant.

The executor applies for a 'grant of probate' from a section of the court known as the Probate Registry. The grant is a legal document which confirms that the executor has the authority to deal with the deceased person's assets (property, money and possessions). They can use it to show they have the right to access funds, sort out finances, and collect and share out the deceased person's assets as set out in the will.

### 1.32 If the person who has died didn't leave a will

If there is no will, a close relative of the deceased can apply to the Probate Registry to deal with the estate. In this case they apply for a 'grant of letters of administration'. If the grant is given, they are known as 'administrators' of the estate. Like the grant of probate, the grant of letters of administration is a legal document which confirms the administrator's authority to deal with the deceased person's assets.

In some cases, for example, where the person who benefits is a child, the law states that more than one person must act as the administrator.

As a last resort the Public Trustee (an independent public body appointed by the Lord Chancellor) can act as an executor. It may be appropriate to appoint the Public Trustee as executor if there is no one else able and willing to act as executor or where a beneficiary is an incapacitated adult or dependent child likely to outlive both parents and other close relatives.

### 1.33 Appointing an executor

You should choose an executor to carry out your wishes, as stated in the will. Executors can be beneficiaries under the will and often people appoint their spouse, civil partner or children as executors. Check with your proposed executors that they are willing to take on this role before naming them in your will, as it can involve considerable responsibility.

Consider naming more than one executor in case one dies before you.

It may also be easier for the executors if there is more than one person to share the work and the responsibility. The executors may have to deal with any day to day administration of your estate in the period before it can be distributed. Executors can claim from the estate for expenses incurred in carrying out their duties.

If the estate is large or complicated, there may be advantages in appointing a professional executor such as a solicitor, accountant or bank manager. A professional executor will charge for the work that they do and these costs will have to be met from your estate. Ask for details of the likely costs before appointing the executor to check that you are comfortable with them.

### 1.34 Choice of executors

You should consider 3 main categories of potential executors:

- individuals
- professional people (solicitor, accountant)
- trust corporation

They all have advantages and disadvantages which need to be considered in the light of the circumstances. You should take into account the following:

- availability
- suitability
- willingness to act
- any possibility of conflict or dispute
- the possibility of predeceasing (a substantial provision should then be made)
- the size, nature and location of the estate, and the extent and complexity of burden placed on executors
- the costs involved

Where professionals are chosen as executors, they may be appointed as individually named persons or as a firm.

Executors like trustees, are in a fiduciary relationship so they cannot make a profit out of their office. They may only claim out of pocket expenses. Therefore, a charging clause must be included, authorising them to charge for all work done by the executors or their firm in administering the estate.

There is no legal objection to a beneficiary being appointed as an executor where he or she is the sole beneficiary, or where the estate is small or uncomplicated.

## 1.35 Understanding the Role of an Executor

An executor has to carry out certain tasks in order to legally fulfill the obligations of the task. An executor you should therefore:

- obtain a copy of the medical certificate indicating cause of death and a formal notice from the doctor if the family members do not wish to do so
- register the death at the local Registry of Births, Deaths and Marriages if there are no family members wishing to do so. The death must be registered in order to obtain the death certificate. Nb. It is advisable to get more than one copy as it will be needed when dealing with Insurance companies, pension providers etc
- could be responsible for making sure any last wishes such as organ or body donations are carried out. The job might also include planning for the funeral or cremation and arranging for payments for the services provided
- make sure you have the last original will of the deceased. The testator should have notified you as to the location of this
- locate all the heirs. This might seem like an easy task and if there are just a couple of children and they are the only ones named in the will, it is easy. If there are numerous heirs and they are named in the will either collectively or individually, the executor must locate each and every one
- make an exhaustive list of all the assets of the estate, from personal to real property, to bank accounts, investments etc. and also all the debts including credit cards, utility bills, loans etc
- it is advisable to open a separate account into which money paid into the estate can be credited. This will prevent estate monies being confused with personal finances
- notify all businesses of the death e.g. utility companies credit card companies, banks, council tax offices, social security etc
- make sure that all the deceased's debts are settled before the estate is distributed to the beneficiaries
- if there are minor or dependent children, the executor could be responsible for arranging for their care and placement. The deceased might have their wishes stated in the will but if not, the courts might need to be involved in the placement. If there are pets, the executor will need to care for them and make arrangements for their continued care
- pay any Inheritance Tax necessary
- you must declare the value of the estate to HMRC on an Inheritance Tax return, within 12 months of death
- payments of the deceased's tax is your personal responsibility. Failure to submit an accurate account to HMRC may leave you open to personal liability or penalty
- contact the local Probate Registry to either obtain the Grant of Probate or the Grant of Administration

- distribute the contents of the will making sure that if anything is to be left to minors, a trustee has been named
- after you have completed all of your tasks, you will need to produce a full set of accounts for the beneficiaries showing the estate assets and liabilities, administration income and expenses and how the estate has been distributed

A key consideration for you will be the extent to which you wish to involve professionals to help and support you in this role.

Countrywide Legal Services can deal with the administration of the estate for the later circulation to the beneficiaries if you so desire.

In addition we have a clear professional duty of care to explain clearly in advance the basis of our charges, so you know what to expect.

If you are considering asking someone to serve as the executor of your estate, be sure you understand the duties and responsibilities of being an executor. Being the executor of an estate is not really an honor, it's a difficult, time consuming job that carries some legal liability. An executor will probably work long, hard hours for at least a year or two getting your estate settled and they could quite possibly be a very unpopular person to your heirs.

## Section 2 - Bloodline Planning

### 2.1 How Can I Protect My Children's Inheritance?

Or more commonly known as '**Bloodline Planning**'.

Bloodline Planning is ensuring that your assets reach your children, grandchildren and other relatives, rather than ending up in the wrong hands!

When assets are distributed to beneficiaries "absolutely", (ie. they receive cash, property or other assets as a direct lump sum payment) so much can be lost. These assets are then considered to be part of the beneficiary's estate and would be at risk of attack from any future divorce settlements, creditors and taxation.

With the strategic use of Trusts, Alan Hill Wills and Trust Planning can ensure that your children and grandchildren are able to benefit completely from the inheritance you want them to receive and at the same time, protect the family home and other assets from being lost to the costs of Long Term Care.

Have you considered what might happen if your surviving spouse were to remarry? How would this affect your own children if he/she later changed their will in favour of the new spouse and any subsequent children?

Or for those of you who already have children from a previous marriage how do you ensure that they would get their fair share?

What if your children are very young or have special needs? How can you ensure that they are fully provided for?

There may also be a business you have worked hard to build up. Surely you would want to protect this for your family too?

Do you really want to leave it all to chance, when with our professional help to set up the correct type of planning all these problems could be solved?

Our expertise will ensure that your assets are both fully protected from attack and immediately available to your loved ones after you are gone.

### 2.2 Utilising Trusts For Bloodline Planning.

It has been established that your children / grandchildren's future inheritance can be at risk from a number of issues.

Taxation is one, but inheritances can be impacted from a number of other more emotional issues such as care costs, where an estate can be reduced significantly in value to pay for these costs.

Family homes may have to be sold, and income and investments drained seriously reducing any subsequent inheritance.

Family circumstances can also be a concern. It may be that there are some family members you would wish to benefit and some that you wouldn't. A classic scenario would be an individual who has married into the family but you wouldn't want to benefit from your estate.

Furthermore, family disputes do occur and divorce and and / or remarriage can greatly influence who inherits and by how much. Subsequently, if on inheriting monies, an individual then divorces that same inheritance is at risk.

Similarly, if an individual inherits assets but then is later subject to bankruptcy proceedings, or has creditors liabilities, then the whole inheritance could be at risk.

The correct '**Trusts**' can provide the protection and control of a multitude of assets from those risks noted above. This protection can extend from the family home, to investment products and Family Businesses.

There are two potential scenarios when planning can be made with Trusts. One is during your lifetime and the other is in preparation for death.

## 2.3 Asset Planning In Preparation For Death.

At Countrywide Legal Services we utilise a range of trusts in conjunction with the Will, which will ensure that your hard earned assets are fully protected for your children and grandchildren. The type of planning is very much dependent on individual requirements and the value of the estate.

## 2.4 Asset Planning In Your Lifetime

Some estate planning can be made whilst you are alive.

Assets could potentially be gifted to beneficiaries before your death. This could prove extremely tax efficient in terms of Inheritance Tax, as assets gifted away are fully outside of the donors estate 7 years after the gift is made.

However, rather than gifting assets absolutely, as this would mean that these assets will again be potentially at risk from divorce, creditors and long term care costs, as well as adding value to the recipients estate, it would be wise to also consider gifting with the aid of '**Discretionary Trusts**'.

The Countrywide Discretionary Gift Trust means that although you make a Gift to your children and grandchildren where appropriate, the asset need not enter their own estate protecting these assets from any possible claims on them in the future.

By Gifting to a Trust, the donor retains full control, however he /she cannot have access to the funds. Even if he/she having made the gift never received any benefit, but potentially could, the Gift is classed as "With Reservation of Benefit" and the full value is deemed to be in the donor's estate at death for Inheritance tax purposes, not just the initial Gift.

Should say Mr Client make the Gift to the trust, Mrs Client can be a potential beneficiary and vice versa for a similar Gift made by Mrs Client.

The Gift Trust ensures that a spouse, children grandchildren and any other named beneficiaries can benefit at the Trustees discretion.

Post Budget 2006, these Gifts are restricted to the Nil Rate Band (plus any unused annual exemptions) for each. Hence up to £624,000 (tax year 2008/09) could be gifted in this fashion. Further chargeable gifts would attract immediate taxation of 20%.

Should both survive 7 years the strategy could be repeated for larger estates.

## 2.5 Access To Protected Assets

At Countrywide Legal Services we recommend a '**Discretionary Trust**' called a '**Probate Trust**' which, whilst still protecting assets from attack from care costs, allows the Settlor access to the assets held in the Trust.

The Family Probate Trust (2006) is essentially a Discretionary Trust with a memorandum of wishes where the settlor is also a beneficiary. The purpose for utilising this trust will be for bloodline planning and not Inheritance Tax Planning, as a transfer of asset by the settlor would be a Gift With Reservation of benefit (GWR).

The main uses for a Probate Trust are the assignment of Investment Bonds to ensure it will pass to those intended without the need to wait for Probate. In addition, for a single/widowed client, a proportion of the main residence can be conveyed into a Family Probate Trust (2006) which can protect the house from care, subject to the usual deprivation considerations. Individual advice would be required as to whether this is an appropriate course of action.

As it is a Discretionary Trust then it is again important to consider the valuations of Trust Funds. If they exceed the Nil Rate Band then they could become subject to Periodic and Exit charges.

## 2.6 Discretionary Trusts

A Discretionary Trust is a trust that gives the trustee(s) discretion to pay the beneficiaries as much of the trust income and or capital, as the trustees believe appropriate. There is only one category of beneficiary which Countrywide name as being Potential Beneficiaries.

There needs to be a number of Potential Beneficiaries, rather than just one, so as to ensure there is discretion as to who could benefit from the Trust Funds. Given that the beneficiaries are only potential beneficiaries, none of the Trust Funds are deemed to be in any of the beneficiaries' estates.

This means that, on the death of a potential beneficiary, the trust funds would not impact their estate for Inheritance Tax purposes.

Rather than using Discretionary Trusts set up via the Will, Countrywide would recommend using a Pilot Trust (referred to as our Family Trust) to receive assets up to the available Nil Rate Band.

A Pilot Trust is a trust established today with £10 which can receive further assets in the future. The Pilot or Family Trust is a Discretionary Trust established today, which will receive up to the available Nil Rate Band upon death, as directed from the will.

Depending on the estate size and type of assets, further Pilot Trusts maybe need to be established, to provide even greater asset protection and tax efficiency.

Management of the Pilot Trusts created by Countrywide enables us to reduce future periodic and exit charges, tax charges which cannot be managed efficiently with Discretionary Will Trusts.

The Discretionary Trust provides us with flexibility, in that any beneficiary from a wide list of categories e.g. Spouse, children, grandchildren can benefit at the Trustees discretion.

The Settlor of each Trust leaves a Memorandum of Wishes for the Trustees to follow after their death and this ensures monies are used for the appropriate beneficiaries. However, the maximum that can be directed to the Discretionary Trust upon death is the Nil Rate Band. Should any assets above this value enter and remain in the Trust, 40% will automatically be charged to the assets above the Nil Rate Band, upon first death.

By directing up to the Nil Rate Band to our Family Trust, assets can remain under the control of the surviving spouse rather than the children, this prevents

any problems in terms of access and use of funds, our strategies ensure you retain total control of the Trusts.

One of the trustees of the discretionary trust will often be the surviving spouse. Appointing a professional trustee is almost always advisable. It is wise to have at least two Trustees.

The beneficiaries of the trust will usually be the surviving spouse, the children and grandchildren.

Should the surviving spouse require capital or an income, the trustees can appoint money to him/her as required. However, as the spouse benefits only at the discretion of the trustees, the value of the trust property will not be included in the survivor's estate and inheritance tax is thus saved on second death.

It is quite clear who can benefit from the Trust and indeed who is not entitled to the Trust Funds. Claims cannot be made to the Trust Funds by estranged partners or creditors. Local Authorities cannot include Trust Funds as part of estate values for those needing care.

In addition to this, a second step of strategy is advised and further Trusts are needed for assets above the '**Nil Rate Band**' which are part of the estate at the time of death.

Incidentally, for information the 'Nil Rate Band' from 6th April 2009 is £325,000.

## 2.7 Life Interest / Interest in Possession Trusts

For married couples or civil partnerships the Interest in Possession Trust would be utilised to cater for the residue over and above the Nil Rate Band.

The Trust can provide the flexibility for the surviving spouse (or any other appointed Trustees) to release capital from the Trust as needed for his/her benefit or to release to the children or other specifically named beneficiaries.

Whilst initially the surviving spouse only has a right to income or use of assets, this "interest in possession" means that for Inheritance Tax purposes, the assets are deemed in the surviving spouse's estate and so taxed upon second death.

Much depends on the planning decided with regards to the Properties and their ownership as to how much could be directed into the IIP Trusts. Having said that, the theory is that it would be the balance of assets in each individual's estate above the Nil Rate Band which would be directed to them.

Assets receive the guaranteed protection of the trusts on first death, a second death may occur many years later and we have no idea what legislation may

be in place at that time. So we advise to maximise the opportunities that we know exist today.

Additional Inheritance Tax planning can be achieved by the surviving spouse should he/she give up all or part of his/her life interest.

Should he/she give up all or part of her life interest then this is treated as a Gift.

However, the surviving spouse loses access to these funds and needs to live for 7 years for the strategy to become fully effective.

Should he/she survive the necessary 7 years, the asset then escapes Inheritance Taxation upon second death.

The proposed strategy is designed to provide maximum flexibility and opportunity for further Inheritance Tax mitigation, decisions can be made by you today or dependent on the surviving spouse's position at that time.

Possibly not a decision the surviving spouse would make in whole, but the decision does not need to be taken until after the first death.

## Section 3 - The Cost of Care

### 3.1 How Do I Protect My Home And Assets From Care Costs?

Most of us work very hard over the years to buy our own homes and build up our savings for our retirement and would like to leave a “little something” for our children and grandchildren after we are gone.

Unfortunately, the costs involved in moving into a Care Home can literally wipe out your entire savings and your home may have to be sold to pay for care fees. This could mean that your loved ones could receive very little, or even nothing at all of what you originally intended them to have.

When someone enters care they are automatically “means tested” and **ALL** of your assets, including your home are taken into account. Only those who have very few assets will escape the costs of care.

### 3.2 So what can be done?

Firstly, it is important to safeguard your home and the first step is to look at the way you currently own your home.

The majority of people own their homes Jointly which means that on first death, the survivor would then own 100% of the full property value and this is when your home becomes vulnerable to attack from Care.

By simply changing the way you own your home to what is known as '**Tenants in Common**', combined with the appropriate Trust planning, will effectively ensure that your property is fully protected should either of you enter care.

### 3.3 So what about my other assets- my bank accounts and savings?

Once again, by changing the way your assets are invested and held, can ensure that your cash or liquid assets are also fully protected from Care.

At Alan Hill Wills and Trust Planning our team of fully qualified Advisors are able to advise on all aspects of Care planning and provide you with the correct strategy to ensure that **ALL** your assets are fully protected.

### 3.4 When would I have to pay for Care? .....

### 3.5 Means Testing - Upper and Lower Limits

If you own more than the upper limit currently £23,000, (which includes your property, any cash or savings and stocks and shares) you will be expected to fund the full cost of your care fees. You would not be able to receive any financial help from your local council until your savings (assets) have been reduced to the upper limit.

If you have less than the upper savings limit or, when your savings drop to this limit, the local council will then assess your ability to pay based on both your capital and income.

If you have assets below the lower limit currently £14,000 then any contribution you may be required to make towards the cost of your care will be based solely on your income and your assets disregarded.

### 3.6 Losing Your Home to Care.

If you own your own home then it's value will usually be counted as capital. There are some important exceptions to this rule.

- Your property will be disregarded for the first 12 weeks after you enter care permanently.
- If your husband, wife, unmarried partner or civil partner lives in your home then it's value will not be counted as capital.
- If a relative aged 60 or over lives in your home, it's value will be ignored.
- If a relative under the age of 60 who is incapacitated (ie. receiving Incapacity benefit or disability Living allowance) lives there, then again the value will be discounted.
- If your home is occupied by your estranged or divorced partner and he or she is a lone parent with a dependent child, it's value will be ignored.
- The value of your property should be ignored if you are liable to maintain a child under the age of 16 and your house is the child's main home. The child must be either a relative of yours or a relative of a member of your family.

There are other situations in which the council may ignore the value of your home at their discretion.

If you jointly own your home with someone who does not fit into any of the above categories ie. a relative under the age of 60 or a friend, then in this situation the council will designate a value to your Interest in the property. The value will depend on the price that your share of the property could be realistically obtained from what is termed as a willing buyer.

If your co-owner is unable or unwilling to buy your share from you, your interest in the property could be held to be worth nothing. This is because it is highly unlikely that an outsider would want to buy into a property when this would involve sharing it with someone else. ( Charging for Residential Accommodation Guide- Department of Health- C.R.A.G Regulations Section 7.014 of the Social Securities act 1970.)

You are most at risk of losing your home to care costs when you enter care after owning your home jointly with a spouse, unmarried partner, or civil partner and they have passed away. The full capital value of your home will have passed to you and you will be assessed on the property's full value along with any formerly joint held assets, such as savings.

Whilst the council cannot force you to sell your home, if you are unable to cover your care home fees the money you owe your local council will mount up. However, the local council can allow you to defer part of your contribution if you are unable or unwilling to sell your home and you do not have enough income or other assets to cover your full fees. This will be seen as an interest free loan or a deferred payments agreement and will be paid back when your property is eventually sold, or when your estate is wound up.

The deferred payments agreements could involve a legal charge being placed on your property. The amount of money you owe will then start to incur interest 56 days after your death, or the date you terminate the deferred payments agreement. You may also have to cover any legal costs involved in placing such a charge. These costs will have to be paid up front and will not be added to your deferred payments.

Although you are able to defer the part of contribution that is based on the value of your home, you will still have to contribute any other assets or income you may have towards the costs of your care home fees.

In certain circumstances the local council may refuse to enter into a deferred payments agreements. They must state their case in writing to you and you will have the option to complain about their decision.

### 3.7 How Can I Prevent My Home Being Sold?

Most people work hard throughout their lives and want whatever assets they have built up to be passed down to their children and grandchildren, so losing their property to care costs is a severe blow.

The simplest way to avoid this happening is to firstly change the way in which your property is owned. Most people when buying a property with another person have the property set up as '**Joint Tenancy**' and whilst this may be the correct way to own a property in certain circumstances, for the vast majority of

people this is not the best way to own a property for either Care Cost issues or Inheritance Tax liabilities.

Severing the tenancy on the property and changing the ownership to **'Tenants in Common'**, so you now each own 50% of the property (percentages of ownership can vary according to individual requirements) and then by setting up mirror Wills, each bequeathing the Testator's share of the property to either a Property Trust or Family Trust can ensure that your home is not lost to care.

On the first of you to die their share of the property is left to the Trust, whose beneficiaries will be the spouse or partner, children, grandchildren or other named beneficiaries. Whilst the surviving partner continues to reside in the property there are no issues but once the survivor goes into care this is when property and assets will be assessed for care costs.

Once again the council would designate a value to the survivor's interest in the property and once again the value would be dependant on the price that could be obtained from a willing buyer.

As before, it is highly unlikely that an outsider would be willing to purchase a property when part of it could be legally occupied by any of the beneficiaries named in the deceased persons Trust (usually his or her children/ grandchildren) and so, the value of the person's share entering care would be held as being nil.

### **3.8 So I Can Protect My Property, But What About My Other Assets?**

As previously stated, when entering Care all assets, property and income will be assessed.

Assets such as Cash, Stocks and Shares, Bank and Building Society accounts, PEPS and ISAs etc will be determined as liquid assets and in addition to any income received will be assessed for Care.

By changing the way your assets are both held and invested will ensure that they are not assessed for care costs.

### **3.9 As stated under the Department of Health CRAG regulations Section 6.002A –**

The treatment of investment bonds in the financial assessment for residential accommodation is complex because, in part, of the differing products which are on offer. For this reason councils should seek the advice of their legal departments when they arise. However, it is possible to offer some general advice and councils are referred to the Social Security Commissioners decision R (IS) 7/98

### 3.10 Section 6.002B states that-

Councils are advised that if an investment bond is written as one or more life insurance policies that contain cashing-in rights by way of options for total or partial surrender, then the value of those rights has to be disregarded as a capital asset in the financial assessment for residential accommodation (see paragraph 15 schedule 10 of the Income Support (General) Regulations 1987. In contrast, the surrender value of an investment bond **WITHOUT** life assurance is taken into account.

### 3.11 Amendment 22nd October 2004

#### Section 6.002 C states

Income from investment bonds, with or without life assurance, is taken into account in the financial assessment for residential accommodation.

Actual payments of capital by periodic instalments from investment bonds, with or without life assurance, are treated as income and taken into account provided that such payments are outstanding on the first day that the resident becomes liable to pay for his / her accommodation and the aggregate of the outstanding instalment and any other capital sum not disregarded, exceed the current levels allowed.

### 3.12 Joint Tenancy and Tenancy in Common

Legally, there are two types of joint ownership, joint equity or property co-buying. You can either own the property as 'joint tenants' or as 'tenants in common'. Do not be put off by the terminology. It has nothing to do with tenancies and applies to freehold or leasehold land.

### 3.13 Joint tenancy

Under this agreement the joint owners together own the whole property and do not have a particular share in it. If one of the owners dies the other automatically becomes the sole owner. This would be the case even if a will had been made leaving the deceased owner's 'share' to someone other than the co-owner.

### 3.14 Tenancy in common

This is the opposite of joint tenancy in that the tenants in common each have a definite share in the property. For example, A and B could own the property in equal shares, or A could own one fifth with B owning four fifths. This would be the most appropriate agreement where people want to own a property in separate pre-determined shares.

Under this form of ownership, if one of the owners dies, his or her share of the property will pass on to whoever he or she specifies in a Will. It is strongly recommended that a Will be made when buying a property as Tenants in Common.

If a Will is not made, then your share of the property will be distributed in accordance with the rules of intestacy (dying without leaving a valid Will).

### **3.15 Which form of joint ownership should you opt for?**

This depends upon personal choice and your particular circumstances. The joint tenancy is most commonly adopted between married couples where there is perceived to be no advantage in defining separate shares in the property and where it would be the intention that on the first death the property would automatically pass to the surviving spouse. The problem with this is that the whole of the property will pass into the survivor's estate upon first death, which may then mean that the property will be assessed for care costs and also have Inheritance tax implications on second death.

The alternative basis of a tenancy in common will often be used between brothers and sisters, parents and children, unmarried couples, business partners and the like. In these relationships it might be desirable for specific shares in the property to be identified and for each owner to be able to leave his or her share in the property to a named person other than the owner.

Owning your property as Tenants In Common also forms part of the strategy in avoiding losing your home to care costs.

## Section 4 - Trusts and Taxation

### 4.1 Can Trusts Reduce Or Eliminate The Tax I Pay?

Trusts have been instrumental in mitigating tax since Medieval times. Trusts were initially created for the Nobility and wealthy landowners to avoid paying taxes to the Crown.

The introduction of Trusts led to a distinct loss of tax revenue and it did not take long for the first anti-avoidance statute to be introduced; by Henry VIII in 1535.

Since then, there have been many changes to **'Trusts'** and their uses and equally to the Inland Revenue rules which affect them.

Nowadays, you don't have to be a Nobleman, or a wealthy landowner to want to take advantage of the many tax strategies Trusts can provide.

Many people now look to using Trusts as a means of mitigating tax which would otherwise be payable.

There are FOUR types of tax which could affect you and your estate:

- Corporation Tax
- Capital Gains Tax
- Inheritance Tax
- Income Tax

So whether you own your own business and your concern is Corporation Tax, own property or hold other forms of assets which would fall prey to Capital Gains Tax, or believe Inheritance Tax will become an issue for your intended beneficiaries; Alan Hill Wills and Trust Planning can provide you with the correct type of tax planning to ensure as much tax as possible is saved.

Alan Hill Wills and Trust Planning deal with people who are experts in providing advice on all aspects of tax planning and the use of Trusts, which will provide these ultimate tax savings. Please note however, Alan Hill Wills and Trust Planning cannot give financial advice - if that is required then please let us know and we can recommend someone who is licenced to give advice of that nature.

### 4.2 What is a 'trust'?

An old financial adviser once said to me, "Alan always remember that there are two basic types of trusts and they are spelled differently. There is a 'Trust' and 'Trussed', make sure you don't use the latter for your clients".

A trust is an obligation binding a person (which can be an individual or a company) called a 'trustee' to deal with 'property' in a particular way, for the benefit of one or more 'beneficiaries'. The person or company who is setting up the Trust is called a Settlor.

### 4.3 What is a 'trustee'?

A Trustee is 'Exactly what it says on the tin'. Trustees are the legal owners of the trust property. They are legally bound to look after the property of the trust in a particular way and for a particular purpose. Trustees administer the trust and in certain circumstances make decisions about how the property in the trust is to be used.

The trust can continue even though the trustees might change, but there must normally be at least one trustee.

### 4.4 What is 'property'?

The property of a trust can include:

- money
- investments
- land or buildings
- other assets, such as paintings

The cash and investments held in the trust are also called the 'capital' or 'fund' of the trust. This capital (or fund) may produce income, such as interest or dividends. The land and buildings may produce rental income. The way income is taxed depends on the type of trust.

### 4.5 What is a 'beneficiary'?

A beneficiary is anyone who benefits from the property held in the trust. There can be one or more beneficiaries, such as a whole family or a class of people, and each may benefit from the trust in a different way.

For example, a beneficiary may benefit from:

- the income only, or
- the capital only, or
- both the income and capital of the trust

## 4.6 What is a 'Settlor'

As I have indicated earlier, a Settlor is a person who has put property into the trust. Property is normally put into the trust when it is created, but it can also be added at a later date.

## 4.7 How is a trust created?

Normally a trust is created by a deed. A Settlor might ask a professional adviser to draw up a trust deed, which then sets out the terms of the trust.

A trust can be created under the terms of a will, when someone leaves instructions that when he or she dies some or all of the estate is to be placed in trust. A trust can also occur if a person dies without leaving a will.

Sometimes the Courts will create a trust, for example; when deciding how to deal with property for the benefit of a child or an incapacitated person who cannot manage his or her own affairs.

## 4.8 I am a Settlor; what do I have to do when a trust is created?

Trust law and the taxation of trusts can be complicated. If you want to create a trust you should seek professional advice. An expert can then draw up the trust deed for you, and give advice on other legal matters relating to trusts.

## 4.9 What are my responsibilities as a trustee?

Your responsibilities depend on the type of trust and the terms under which the trust is created. The Settlor may have given instructions that trustees carry out various functions, and trust law may impose further obligations.

## 4.10 For taxation purposes you are responsible for:

- notifying the Inland Revenue that tax is due, within six months of the end of the tax year for which it is due, where you have not received a tax return for the year
- keeping records of the income and capital gains of the trust
- completing and sending back any tax return issued to you
- paying any tax due on the income or capital gains of the trust
- supplying certificates or vouchers to the beneficiaries to show how much income they have received from the trust in the tax year and how much tax the trustees have deducted. (Inland Revenue Trusts can supply forms for you to use.)

Depending on the terms of the trust deed, you can appoint a professional adviser, such as a solicitor or accountant, to carry out some or all of these tasks. However, if you do, you are still responsible for ensuring that all tax obligations are carried out satisfactorily.

#### 4.11 What happens when a trust ceases to exist?

If a trust is wound up the Trustees should notify the Inland Revenue Trusts office and complete a tax return for the period up to the date the trust is wound up.

#### Remember, you will need to

- make provision for any tax that may be due
- consider whether the ending of the trust gives rise to a capital gains tax liability.

If the property of the trust is distributed before any outstanding tax is paid then you might have to pay that tax out of your own pocket.

#### 4.12 The different Trusts Available

There are a number of different sorts of trusts, but usually they fall into one of the following categories:

- bare trusts
- interest in possession trusts
- discretionary trusts
- accumulation and maintenance trusts
- mixed trusts

#### 4.13 What is a 'bare trust'?

A bare trust, also known as a 'simple trust', is one in which each beneficiary has an immediate and absolute right to both capital and income. The beneficiaries of a bare trust have the right to take actual possession of trust property.

The property is held in the name of a trustee, but that trustee has no discretion over what income to pay the beneficiary. In effect, the trustee is a nominee in whose name the property is held and has no active duties to perform.

#### Example

Graham leaves his sister Julie some money in his will. The money is to be held in trust, with Julie entitled to the money and any income, such as any interest it earns. She also has a right to take possession of any of the money at any time.

This is a bare trust because Julie is absolutely entitled to both the capital (the original money settled in the trust) and the income (any interest earned).

#### 4.14 What is an 'interest in possession trust'?

This type of trust exists when a beneficiary, known in this case as an 'income beneficiary', has a current legal right to the income from the trust as it arises. The trustees must pass all of the income received, less any trustees' expenses and tax, to the beneficiary.

A beneficiary who is entitled to the income of the trust for life, is known as a 'life tenant' (a 'liferenter' in Scotland) or as having a 'life interest' (a 'liferent interest' in Scotland).

The income beneficiary need not, and often does not, have any rights over the capital of such a trust. Normally, the capital will pass to a different beneficiary, or beneficiaries, at a specific time in the future or after a specific future event. Depending on the terms of the trust, the trustees might have the power to pay capital to a beneficiary even though that beneficiary only has a right to receive income.

A beneficiary who is entitled to the trust capital is known as the 'remainderman' ('fiar' in Scotland) or the 'capital beneficiary'.

#### Example

Stephen is married to Karen. On his death Stephen's will creates a trust and all the shares he owned are to be held in that trust. The dividends earned on the shares are to go to Karen for the rest of her life, and when she dies the shares pass to the children or grandchildren. Karen has an 'interest in possession' in the trust as she is entitled to the income (the dividends) arising on it for the rest of her life. Unlike Juliet in the bare trust example,

Karen has no right to the capital, so when she dies the trust ceases and all the capital (the shares) passes to her children or grandchildren (the remaindermen or fiars).

#### 4.15 What is a 'discretionary trust'?

Trustees of a discretionary trust generally have 'discretion' about how to use the income of the trust. They may be required to use any income for the benefit of particular beneficiaries, but the trustees can decide:

- how much is paid
- to which beneficiary or class of beneficiaries payments are made

- how often the payments are made
- what, if any, conditions to impose on the recipients

The trustees may, or may not, be allowed to 'accumulate' income within the trust for as long as the law allows rather than pass it to the beneficiaries. Income that has been accumulated becomes part of the capital of the trust.

The trustees can decide how to invest or use the money and any interest it earns to benefit the grandchildren. So, when the children are young, the trustees might decide to pay for music lessons for them. As they get older, the trustees might pay towards a wedding. After a specified number of years, the trustees wind up the trust and distribute all of the money to the children.

#### 4.16 What is an 'accumulation and maintenance trust'?

An accumulation and maintenance trust is one in which the beneficiaries will become entitled to the property or at least the income when they reach a certain age (no more than 25). The trustees can use the income for the maintenance of the beneficiary before the date on which that beneficiary becomes entitled to the property or to an interest in possession in that property.

Trustees of an accumulation and maintenance trust are given power to 'accumulate' the income of the trust until a certain date, at which time the beneficiary, or beneficiaries, are entitled to the property of the trust or to the income arising from that property.

In England and Wales, the beneficiary (unless the terms of the trust say otherwise) becomes entitled to the income from the property held in the trust when he or she reaches age 18 and an interest in possession trust is created at that point.

The position in Scotland is different, as there is no equivalent entitlement to the income of the trust at age 18. However, Scottish law limits accumulation periods so accumulation and maintenance trusts will often end when the beneficiaries reach the age of majority.

#### Example

James puts money into an accumulation and maintenance trust for the benefit of his grandson Andrew.

The trustees can make payments to Andrew from the trust for his maintenance and will accumulate any remaining income. The terms of the trust give Andrew the capital and any accumulated income at the age of 25. So on his 25th birthday Andrew is entitled to all the money at that date.

## 4.17 What is a 'mixed trust'?

A mixed trust is a mixture of more than one type of trust, for example:

- an interest in possession trust and a discretionary trust, or
- an interest in possession trust and an accumulation and maintenance trust

### Example

Two children benefit from an English accumulation and maintenance trust. Zoe reaches 18 while Sarah is still 14.

The part of the trust benefiting Zoe becomes an interest in possession trust while the part that benefits Sarah remains an accumulation and maintenance trust until she reaches 18. So, when Zoe reaches 18 the trust becomes a mixed trust.

## 4.18 What is a 'Settlor-interested trust'?

There are special tax rules for trusts in which the settlor 'retains an interest' in the trust, for example where the settlor receives income from the trust, but these are too specialised to be included in this. Our professional advisers will be able to provide you with more information about them.

## 4.19 How are trusts taxed?

This section explains briefly how different types of trusts are charged to income tax and capital gains tax. Inheritance tax is covered in the IHT series of booklets obtained from Direct Gov.uk

Different tax rules apply to settlor interested trusts, non-resident trusts and special trusts, and are not covered in this guide.

Depending on the type of trust, when income and capital gains arise in a trust, tax might be charged on

- the trustees
- the beneficiaries
- the settlor

## 4.20 How is a bare trust taxed?

Bare trusts are treated for tax purposes as if the beneficiary holds the trust property in his or her own name. Income tax and capital gains tax are charged on the beneficiary, as if the trust did not exist.

The beneficiary must declare any income and capital gains on his or her personal tax return. Although trustees can pay income tax on behalf of a beneficiary, it is the beneficiary who is chargeable to tax.

#### **4.21 How is an interest in possession trust charged to income tax?**

The trustees are normally chargeable to income tax on income received, so

- rent and trading income are chargeable at the basic rate (currently 22%)
- UK dividend income is chargeable at the starting rate for dividends (currently 10%) and the tax credit attached to the net dividend meets the trustees' liability
- savings income, such as bank interest, is chargeable on the trustees at the lower rate (currently 20%) Such income usually has tax deducted at source by the bank or building society, and this is taken into account in taxing the trustees.

The beneficiaries are entitled to the income from the trust after tax and expenses, and are taxed on this in the normal way. They are entitled to credit for tax paid by the trustees or deducted at source.

If beneficiaries are starting rate taxpayers or non-taxpayers they will be able to reclaim some or all of the tax paid, though tax credits on dividends cannot be paid. If they are liable at higher rates, further tax will be due.

#### **4.22 How is a discretionary trust charged to income tax?**

The trustees are liable to tax on income received at the rate applicable to trusts (currently 40%, increasing to 50% in April 2010), but dividends and other similar income are chargeable at the trust rate that applies to dividends (currently 32.5%).

All income paid to the beneficiaries carries a credit at the rate applicable to trusts. So, the payment is treated as if it had been made after the deduction of tax at that rate. If beneficiaries are basic or starting rate taxpayers, or non-taxpayers, they will be able to reclaim some or all of the tax paid. If they are liable at higher rates, further tax will be due.

If the trustees also have power to accumulate income, they can choose to do so and that income becomes additional capital of the trust. If, in later years, the trustees distribute some of the accumulated income to the beneficiaries the payment is a capital distribution, and not an income distribution. Beneficiaries are not taxable on capital distributions.

## 4.23 What is a 'tax pool'?

When trustees of a discretionary or accumulation and maintenance trust pay income to beneficiaries they have to ensure that they have paid enough tax to cover the tax credit at the rate applicable to trusts. Trustees, therefore, need to keep a record of tax payments, known as the 'tax pool'.

The tax pool consists of tax paid by the trustees on income they have received, and tax deducted at source, for example by banks or building societies on interest. It does not include non-payable tax credits, such as the tax credit on dividends. When the trustees pay income to beneficiaries the tax pool is reduced by the tax credit on that income.

If the tax in the tax pool is not enough to cover the tax credit needed for the payment to beneficiaries the trustees must pay the difference in their Self Assessment Tax return for the year.

## 4.24 How is an accumulation and maintenance trust taxed?

In the period during which the trustees can accumulate income, the trustees and beneficiaries are taxed in the same way as in a discretionary trust, as described above.

When the accumulation period ends, the tax treatment depends on what happens to the trust property. For example, if:

- an interest in possession trust is formed, then the tax treatment for trustees and beneficiaries of interest in possession trusts will apply
- it becomes a discretionary trust, then the tax treatment for trustees and beneficiaries of discretionary trusts will apply
- the trust comes to an end, and the trustees pass the trust property to the beneficiaries, the trustees may have to pay capital gains tax on any gain arising at that point, but will not have any liability on future income or gains.

## 4.25 How is a mixed trust charged to income tax?

For both trustees and beneficiaries, in a mixed trust the income for each part of the trust will be taxed under the rules for that type of trust. For example, the part of the trust in which there is an interest in possession will be taxed as such, while the discretionary part will be taxed as a discretionary trust.

## 4.26 Trusts and capital gains

Trustees are liable to tax, at the rate applicable to trusts, on any capital gains above an annual exempt amount arising for:

- interest in possession trusts
- discretionary trusts
- accumulation and maintenance trusts, and
- mixed trusts

The beneficiaries are not taxed on any trust gains and do not get credit for tax paid by the trustees.

The annual exempt amount is normally equal to half the annual exempt amount for an individual. Trustees of trusts for the benefit of people who are mentally handicapped or in receipt of certain specified allowances may be entitled to the whole annual exempt amount for an individual.

Where there is more than one trust made by the same settlor, the annual exempt amount is reduced proportionally on the basis of the number of settlements made since 6 June 1978 and still in existence.

## 4.27 I am a trustee. When will I receive a Self Assessment tax return?

Self Assessment is the method for calculating and paying tax. If you are a trustee (except a trustee of a bare trust) you are responsible for completing and sending back a tax return for trust income and gains and paying the tax on time. Failure to do so may result in automatic interest, surcharges and penalties.

Self Assessment tax returns are generally issued each year in April, and ask for details of income and capital gains for the tax year ended on 5 April. You must complete and send us the Trust and Estate tax return by:

- 30 September, if you want us to calculate the tax due, or
- 31 January in the following year if you intend calculating your own liability

If we get your tax return after 30 September, we cannot guarantee to let you know how much you owe in time for you to pay by 31 January. This means that you have to estimate how much to pay. If you pay too little, you will have to pay interest and possibly a surcharge.

## 4.28 When do I have to pay any tax due?

As trustee, you may need to pay the tax due for any one year in three instalments:

- a payment on account on 31 January in the tax year
- another payment on account on 31 July after the end of the tax year, and
- a final payment on the following 31 January, if there is any more due

The first and second payments on account are usually equal to half of the total liability for the previous year (excluding capital gains tax), while the final payment is a balancing payment.

## 4.29 I am not the only trustee. Are we all liable to pay tax due?

All trustees of an individual trust are jointly liable for any tax due, not just a share of it. However, where there is more than one trustee acting you normally arrange for one person, known as the 'principal acting trustee', to deal with the Inland Revenue on your behalf.

The actions of the principal acting trustee are treated as actions of all of the trustees, so

- if he or she deals with everything properly, all of you will be treated as fulfilling your tax obligations
- if he or she fails to fulfil the tax obligations, then you are all treated as failing to meet those obligations

We can recover any tax or interest on tax from any trustee if the principal acting trustee does not pay. Any trustee can be held liable for penalties or surcharges incurred during the period he or she was a trustee.

## Section 5 - Professional Trustees

### 5.1 Why Should I Use A Professional Trustee?

Many people when creating Trusts appoint their children or other family members as Trustees.

The Trustees are often also the beneficiaries to the deceased's estate and this fact may pose some real problems after the death of the Settlor (the owner of the Trust).

Once the deceased's assets have entered the trust a Trustees meeting must be held and any decisions regarding the distribution of these assets have to have the agreement of **ALL** of the Trustees. As we all are aware this can often prove to be an issue within some families.

Appointing a Professional Trustee, such as Countrywide Estate Planning Limited, will ensure that a totally unbiased approach is taken when dealing with the deceased's assets and that the Settlor's wishes are completely upheld.

The role of a Trustee can be extremely daunting for an untrained person and often decisions will be made which may not be completely in the interest of the beneficiary(s). This may be simply because the Trustees do not have a clear understanding of the impact their decisions may have on the beneficiary's inheritance.

Countrywide Estate Planning Ltd gives consideration to the tax status, financial status and marital situation, of the intended beneficiary (ie if the beneficiary were undergoing financial difficulties or entering into Divorce Proceedings).

This ensures that the assets would not be lost to creditors or future ex spouses.

Our advice can be crucial in preserving assets and ensuring as much as possible is received by the intended beneficiary(s) and is not lost to tax, divorce or in settlements to creditors.

### 5.2 The Role Of A Trustee

Trusts offer a means of holding and managing money or property for people who may not be ready or able to manage it for themselves. Used in conjunction with a will, they can also help ensure that your assets are passed on in accordance with your wishes after you die.

### 5.3 What is a trust?

I know that I am repeating myself here, but this is an important area and some clients may have just gone to this section to learn about the role of a Trustee and may have missed the earlier sections. So, a trust is a legal relationship which is created when a person (The 'Settlor') transfers assets to two or more other people (the 'trustees') with instructions that they hold the assets for the benefit of an individual or group of individuals (the 'beneficiaries').

To achieve this, the trust separates the legal ownership of the policy from the beneficial ownership. The legal ownership of the policy is given to the trustees who are bound by the terms and condition of the trust deed and subject to general trust law. It is their duty to hold and administer the trust property in the interests of the beneficiaries who will ultimately benefit from it.

### 5.4 Settlor

The Settlor is the legal name given to the person who creates the trust. The Settlor says in the trust deed how the trust's property and income should be used.

### 5.5 Beneficiaries

The beneficiaries under a trust are the beneficial owners of the trust property and everything that takes place must be for their benefit. A beneficiary may be named or defined by description or class, such as the future issue of the Settlor or issue of my brother etc.

### 5.6 Trust property

This is the property (or 'capital') that is put into the trust by the settlor. It can be anything, including:

- land or buildings
- investments
- money
- antiques or other valuable property

### 5.7 Trustees

Trustees are the legal owners of the trust property. The role of the trustee is to hold the trust property and administer it for the benefit of the beneficiaries as directed by the trust provisions.

There can generally be any number of trustees but for our own and most trusts, the number ranges from 2 – 4.

Any person who is over 18 and sane can act as a trustee although we would tend to advise against appointing an individual who is bankrupt.

It is also possible for an institution to act as a trustee, such as ourselves, Countrywide Estate Planning Ltd. We can offer our services as a professional trustee.

It is possible for the same person to be both a trustee and a beneficiary.

### **5.8 The Trustee's Duties can be summarised as follows:**

- all trustees should familiarise themselves with the terms of the trust so that they can administer it in accordance with the trust deed
- all dealings with the trust fund by the trustees must be for the benefit of the beneficiaries
- the trustees must use their utmost diligence to avoid any loss. If they are negligent and a loss arises they may be responsible for that loss to the beneficiaries
- all trustees must act unanimously. Under English law, trustee's decisions cannot be made by a majority of trustees unless the trust specifically allows this

### **5.9 Trustees Powers and Duties**

Trustees have a range of statutory powers and common law responsibilities that they would be expected to follow.

### **5.10 Trustees Statutory Powers**

There are several statutory powers and these can be quite comprehensive. The following highlights just a few of the main powers:

- trustee powers of investment – Section 3 of the Trustee Act 2000 permits trustees to “make any kind of investment that he could make if he were absolutely entitled to the asset of the trust”. This provision is subject to any restriction imposed by the trust itself.
- act in the best interest of all beneficiaries – The trustees must judge the suitability of investments having regard to the best interests of all beneficiaries, past and present
- exercise reasonable care and skill – A trustee must pay regard to any specialist knowledge or experience that he holds
- review investments from time to time – Trustees must undertake periodic reviews of the investments held by the trust

- take proper advice – When considering any investments, or when carrying out a review of the investments of the trust, the trustees must obtain and consider proper advice
- power to apply income for the benefit of child beneficiaries – The trustees have the discretion to apply the whole or part of the income of a trust for the maintenance, education or benefit of a child beneficiary
- power to delegate – The Trustee Act 2000 empowered trustees to delegate to agents any of their functions except certain defined responsibilities

## 5.11 Trustees Common Law Responsibilities

Below are highlight just some of the many Common Law Responsibilities a trustee has:

- duty to take account of the Settlor's wishes - A settlor may sometimes write a 'side letter' to the trustees containing an 'expression of wishes'. This is not binding upon the trustees, but would stand alongside the trust document and provide guidance to the trustees as to the way in which the settlor would like them to carry out their duties
- duty to ensure fairness between beneficiaries – The trustees must hold the balance fairly between different categories of beneficiary e.g. if a trust provides that one class of beneficiary is to receive the income from the trust fund during their lifetime and a second class is to receive capital on the death of the income recipient, it would be unfair to the income recipient if the trustees were to invest in assets which produce little or no income, but offered the prospect of greater than usual capital growth
- duty to take account of tax considerations – The trustees must take into account considerations such as tax and administrative costs when choosing investments

The above duties are just a few of the main considerations. With the use of a professional trustee, it is within their day to day routine to ensure that all of the trustee's duties are followed.

## 5.12 Here at Alan Hill Wills and Trust Planning we can effectively offer a trustee service and you would see the following benefits:

- as authors and creators of the Family Trust they are best placed to make any future amendments that could be necessary to ensure the maximum efficiency of the trust i.e
- best use of tax legislation, optimising trust efficiency both before and after first and second death
- efficient advisory service in the assignment/retirement of trustees

Our legal partner has had years of experience in both will writing and the financial services sector they can facilitate the best investment advice for property/funds within the trust. Under the 'Trustees Act 2000', trustees are duty bound to seek independent financial advice for monies in the trust, ensuring these are utilised in the best interest of the beneficiaries. Trustees have and will continue to be prosecuted by the beneficiaries where they consider their 'duties of care' have been neglected.

The Financial Advisers used to advise the trustees have extensive experience and advanced qualifications in the areas of retirement, taxation and trust planning.

You can consider Alan Hill Wills and Trust Planning as a 'one stop shop' for all to ensure the Trust is managed as intended along with advice on key stages from 'cradle to grave'. The documentation of the ongoing Trust management is as important to its tax ongoing efficiency as the Trust itself.

Remember, whilst you have the reassurance of professional expertise behind you, there is **no annual fee levied**. When you feel the need to take advice, our fees will be disclosed and agreed before any work is undertaken and you have the reassurance that as Settlor you have the powers within the trust to 'hire and fire' trustees.

You retain complete control so there are no disadvantages, just advantages, providing the Trust is efficiently managed.

## Section 6 - Powers of Attorney

### 6.1 What If I Am Unable To Manage My Affairs?

There may come a time in your life when you are unable to manage your financial affairs or personal welfare, owing to some form of incapacity and you will need someone to act on your behalf.

Even when we are young, we can find ourselves incapacitated owing to illness or injury and it can be invaluable having a reliable person, who is able to manage your personal affairs and remove the anxiety of having unpaid bills, at a time when you most need peace of mind.

Similarly as we get older, the need for an attorney increases as we are more prone to illness and injuries.

By creating an '**Attorney**' in advance ensures that if the worst were to happen, you can rest assured that both your financial affairs and personal welfare are in safe hands.

### 6.2 So Who Do I Choose?

You can appoint a friend, relative, or a professional as your Attorney which allows them to act on your behalf.

It is important that you choose who you would like to act on your behalf very carefully. You should choose people you can trust to act in your best interests, giving consideration to how they manage their own affairs.

It is always a good idea to appoint more than one Attorney to ensure that this power is not abused.

### 6.3 The Different Types of Powers of Attorney

You may have heard of an Enduring Power of Attorney (EPA) and be aware that this was replaced in October 2007. (EPAs set up prior to 1st October 2007 remain valid, however, it should be noted that if the Donor is believed to be becoming, or is mentally incapable of managing their affairs then the Attorney(s) have a duty to register the EPA with the Court of Protection).

It cannot be simply assumed that the Donor has lost mental capacity and Attorneys must follow the principles of The Mental Capacity Act 2005. Copies of the Code can be obtained from Her Majesty's Stationary Office.

If you hold an Enduring Power of Attorney and still have mental capacity and are able to make decisions for yourself (ie.the EPA is unregistered) you can make a Personal Welfare LPA to run in conjunction with the EPA.

## 6.4 So, What has Replaced Enduring Powers of Attorney?

These have been replaced with three different documents:

- A Lasting Power of Attorney (LPA) for Property and Affairs
- A Lasting Power of Attorney (LPA) for Personal Welfare
- A General Power of Attorney

Please note these Powers are only applicable to England and Wales.

## 6.5 LPA for Property and Affairs

A Lasting Power of Attorney for Property and Affairs gives authority to the appointed Attorney to handle property and financial matters for the Donor.

The powers extend to all matters concerning the Donor's finances: this could include selling property belonging to the Donor, (including the Donors home), buying property in the Donor's name, managing bank accounts and investments, continue to run their business and make decisions about the Donor's healthcare and payment for this care.

## 6.6 LPA for Personal Welfare

A Lasting Power of Attorney for personal Welfare covers decisions relating to your social and healthcare needs which can include where the Donor lives, how they are cared for and what healthcare they receive, for example the decision to send the Donor to a nursing home.

Attorneys of a Personal Welfare LPA can only use this power if the LPA document has been registered with the Office of Public Guardian and the Donor is not capable of making the decision themselves.

An '**Advance Directive or Living Will**' can be overridden by a subsequent Personal Welfare LPA if the Donor has specifically chosen to give their Attorney the authority to give or refuse life-sustaining treatment on their behalf. This also means that a Personal Welfare LPA can be overridden by a valid and applicable Advance Directive (Living Will) made after the Personal Welfare LPA, if in the LPA the Donor has chosen not to give authority to their Attorney to authorise life-sustaining treatment.

The Personal Welfare LPA covers both the welfare of the Donor and the consent or refusal of consent to life sustaining treatment.

## 6.7 Further rulings on LPAs;

An LPA must contain a certificate completed by an independent person to confirm that the Donor understands the power and importance of the LPA and is not creating the power under duress.

Anyone the donor specifies can be notified of the registration of the LPA (up to 5 people), however if there is no one to notify then the Donor must have a second Certificate provider.

It should be noted that Lasting Powers of Attorney have no legal standing until registered with the Public Guardian's Office. They can be registered at any time ie: before the Donor loses mental capacity or when the Attorney believes this to have happened.

After registration, the Donor can continue to make decisions providing they still have the mental capacity to do so

## 6.8 Revoking or Cancelling the Power

The Donor can revoke or cancel the LPA (providing they have the mental capacity to do so. If a spouse or civil partner is the Attorney, or Donor, dissolution or annulment of the relationship will automatically revoke the power.

An LPA for Property and Affairs is revoked if the Attorney(s) or the Donor are declared bankrupt.

An LPA for Welfare is not terminated by bankruptcy.

## 6.9 General Power of Attorney

A General Power of Attorney allows the Attorney to make decisions and act in any matters relating to the Donor's property and affairs (with the exceptions of making a Will, making gifts or performing in the Donor's role as a Personal Representative (administrator) or Trustee.)

It is important to note that the Donor remains liable for the actions of the Attorney and as such you should only appoint an Attorney who you implicitly trust.

A General Power of Attorney (GPA) is effective immediately and will remain in force until it is either cancelled by the Donor (the person on whose behalf the Attorney is acting) or, should the Donor become mentally incapable, then the General Power is automatically revoked. The General Power would also be revoked by the death or bankruptcy of either the Donor or the Attorney.

Unlike a Lasting Power of Attorney a GPA there is no scope for restricting the Attorney's powers.

A General Power of Attorney can be revoked at any time by either writing cancelled across the document or simply tearing it up.

## **6.10 What is an Advance Directive or Living Will?**

When you are ill, you can usually discuss treatment options with your Doctor and then jointly, reach a decision about your future care.

However, you may be admitted to hospital when unconscious or become unable on a temporary, or permanent basis, to make your own decisions about your treatment, or communicate your wishes. This may happen, for example if you have a car accident, a stroke, or develop dementia.

To use the technical term – you would 'lack mental capacity' to make an informed decision and /or communicate your wishes. In such situations, doctors have a legal and ethical obligation to act in your best interests.

One exception to this is if you have made an advance decision refusing treatment. If this decision is valid and applicable to the circumstances, medical professionals providing your care are bound to follow it.

The term 'living will' could be used to refer to either an advance decision / directive or an advance statement. An advance decision is a decision to refuse treatment; an advance statement is any other decision about how you would like to be treated. Only an advance decision is legally binding, but an advance decision should be taken into account when deciding what is in your best interests.

## **6.11 What is an advance statement?**

This is a general statement of your wishes and views. It allows you to state your preferences and indicate what treatment or care you would like to receive should you in the future, be unable to decide or communicate your wishes for yourself. It can include non medical things such as your food beliefs or preferences, or whether you would prefer a bath to a shower.

It could reflect your religious or other beliefs and any aspects of life which you particularly value. It can help those involved in your care to know more about what is important to you. It must be considered by the people providing your treatment when they determine what is in your best interests, but they are not legally bound to follow your wishes.

Advance statements can also be used to let the people treating you know who you would like to be consulted, at a time a decision has to be made, if you are unable to make that decision yourself.

## **6.12 What is an advance decision to refuse treatment?**

An advance decision to refuse treatment is the only type of living will that is legally binding. An adult with mental capacity can refuse treatment for any reason, even if this might lead to their death. However, no one is able to insist that a particular medical treatment is given, if it conflicts with what the medical professionals providing the treatment conclude is in the patient's best interests. This is why an advance decision can only be a refusal of treatment.

An advance decision to refuse treatment must indicate exactly what type of treatment you wish to refuse and should give as much detail as necessary about the circumstances under which this refusal would apply. It is not necessary to use precise medical terms, as long as it is clear what treatment is to be refused in what circumstances.

An advance decision can only be made by someone over age 18 who has the mental capacity to make the decision. This means they must be able to understand, weigh up and retain the relevant information in order to make the decision to refuse treatment; and they are then able to communicate that decision.

## **6.13 How to make an advance decision to refuse treatment**

An advance decision does not have to be in writing, unless it is a decision to refuse life-sustaining treatment (see the next section below for the legal requirements for this type of decision). Verbal instructions can amount to a valid advance decision but there is more risk that a verbal refusal of treatment would not be carried out. The person providing treatment may not be aware of it, or there could be uncertainty about its validity or applicability.

For example, a statement made by a patient during a discussion with their doctor that they would not wish to have a particular type of treatment in certain circumstances in the future, can be a valid advance decision without it being put in writing. It would be best practice for the doctor to record the statement in the patient's medical records, but it can still be valid if this is not done. Even if you are putting your advance decision in writing yourself, it is a good idea to discuss it with your doctor.

To avoid uncertainty over the validity of an advance decision you should put it in writing, or ask someone else to write it down for you if possible.

Remember that the above points are not legal requirements, but they can help to avoid uncertainty over the validity and applicability of your advance decision.

There are legal requirements if you are making an advance decision to refuse life-sustaining treatment.

## **6.14 How to make an advance decision to refuse life-sustaining treatment.**

If you want to make an advance decision to refuse life-sustaining treatment, it must meet certain requirements set out in the Mental Capacity Act.

Life-sustaining treatment is defined in the Act as treatment which, in the view of the person providing health care to the person concerned, is necessary to sustain their life. This could include artificial nutrition and hydration to someone who cannot eat or drink by mouth.

The legal requirements for a valid advance decision to refuse life-sustaining treatment are as follows:

- The decision must be in writing. You can ask someone else to write it down if you cannot do it yourself
- You must sign the document. You can instruct someone to sign it on your behalf in your presence if you cannot sign it yourself
- Your signature (or the signature of the person signing on your behalf) must be witnessed. The witness must also sign the document in your presence
- You must include a written statement that the advance decision is to apply to the specific treatment even if your life is at risk

## **6.15 Advance decisions made before 1st October 2007**

The part of the Mental Capacity Act relating to advance decisions came into force on 1st October 2007. An advance decision made before that date can still be valid if it meets the requirements set out in the Act.

If you made an advance decision refusing life-sustaining treatment before 1st October 2007, you should review it to make sure it meets the requirements of the Act (see below). It is likely that many such advance decisions will not meet those requirements; in particular, your decision must include a statement that it is to apply even if your life is at risk. You should remake your decision if your original decision does not meet the requirements of the Mental Capacity Act.

## 6.16 Implementation of the Mental Capacity Act 2005

The Mental Capacity Act 2005 provides a legal framework to help empower people to make their own decisions and to make clear what actions carers and family can take. It puts the law on advance decisions / directives (or living wills) on a clear statutory basis for the first time.

The rules relate particularly to advance decisions to refuse treatment, including refusal of life-sustaining treatment.

The Act is fully in force, including the parts on advance decisions, from 1st October 2007. The following explains the law on advance decisions.

There is a Code of Practice to the Mental Capacity Act, which gives guidance on how it will work in everyday situations. Among other things, it explains how to assess whether someone lacks capacity to make a particular decision, and what it means to act in someone's best interests.

Anyone dealing with an advance decision, in particular, medical staff providing care to someone who has made an advance decision should have regard to the Code of Practice.

There are transitional arrangements for people who made an advance decision to refuse life-sustaining treatment before 1st October 2007 but who have since lost the mental capacity to remake that decision.

A decision made before 1st October 2007 which does not meet the requirements (to be signed and witnessed and to include a statement that it will apply even if life is at risk) can still be valid and applicable if:

- it is in writing
- the person providing the treatment has a reasonable belief that the advance decision was made before 1st October 2007, and
- the person providing the treatment has a reasonable belief that the person making the advance decision has lacked capacity to amend it since 1st October 2007. The normal requirements regarding validity and applicability must also be met
- practice

## 6.17 Deciding if an advance decision is valid and applicable.

You should take steps to make sure that the people providing your treatment will be aware of your advance decision at the relevant time. This could mean discussing it with your GP, or other treating doctors, while you still have capacity to do so, and making sure that a copy of your decision is kept in your medical notes. It would also be helpful to make sure that your family and friends are aware of the decision. If the person providing your treatment is aware of your

advance decision, they must then consider whether it is valid and applicable to the particular circumstances.

When deciding whether an advance decision is valid, the person providing the treatment should try to find out:

if you have withdrawn the decision since you made it:

- at a time when you had the mental capacity to do so, and if you have done anything which is inconsistent with the decision and suggests that it no longer represents your wishes
- and if you have since made a Lasting Power of Attorney, giving someone else the authority to make the decision consenting to or refusing the particular treatment

When deciding whether an advance decision is applicable to the particular circumstances, the person providing the treatment must:

- assess whether you actually still have mental capacity to make the particular decision about your treatment at the time it has to be made (they must start from the assumption that you have capacity and the advance decision will only be relevant if there is evidence that this is not the case)
- check that the treatment and circumstances are the same as those referred to in the decision, and consider whether there are any new developments that you didn't anticipate at the time you made your decision, which could have affected your decision; for example new developments in medical treatment, or changes in your personal circumstances

Professionals providing your medical treatment are protected from liability for not providing treatment if they reasonably believe there is a valid and applicable advance decision.

They can provide treatment if they are in doubt over the existence, validity or applicability of an advance decision, and they are again protected from liability.

## 6.18 Why make an advance decision?

You may wish to make an advance decision if you have strong feelings about a particular situation that could arise in the future. This might relate to having a limb amputated following an accident or having a blood transfusion.

More commonly, you may have been told that you have a terminal illness or form of dementia. You may wish to prepare an advance decision indicating the

type of treatment you would not want to receive in the future. Making an advance decision may give you peace of mind in knowing that your wishes should not be ignored if you are unable to take part in the decision making process at the relevant time.

Considering making an advance decision provides an opportunity to talk to and ask questions of your medical team during the early stages of an illness rather than delaying it until it is more difficult to participate. It can also provide an opportunity to discuss what may be difficult issues with family and friends.

You do not have to make an advance decision. You may decide to leave it to the healthcare professionals providing your treatment to decide what is in your best interests. When deciding this, they should take into account any evidence they have of your past wishes, your beliefs and values; and they should consult your friends, family and carers where appropriate. They may decide that what is in your best interests is not the same as what you would have decided to do yourself.

## 6.19 Lasting Powers of Attorney

Alternatively, you could consider creating a '**Lasting Power of Attorney**', which would allow you to choose who should make decisions about your treatment if you are not able to do so yourself. There is a section in the personal welfare LPA document where you can specify if you want your attorney(s) to have the power to make decisions about life-sustaining treatment.

What an advance decision cannot be used for

An advance decision cannot be used to:

- ask for anything that is illegal such as euthanasia or for help to commit suicide
- demand care the healthcare team considers inappropriate in your case
- refuse the offer of food and drink by mouth
- refuse the use of measures solely designed to maintain your comfort such as providing appropriate pain relief, warmth or shelter
- refuse basic nursing care that is essential to keep you comfortable such as washing, bathing and mouth care

## 6.20 Who to consult about an advance decision

It is always advisable to discuss your intentions with a medical professional such as your GP and your family and friends.

If you have a terminal illness, you may wish to speak to the doctor involved in your care. He / she can help you understand the consequences of refusing or

opting for a particular treatment and relate specific decisions to the likely course of your illness. This doctor can also help you express your wishes clearly and verify you were competent at the time you prepared and signed the document.

## 6.21 Reviewing your advance decision

It is important for the people providing your treatment to feel confident that you have not changed your mind since your advance decision was made. If new or improved medical treatments are now available, or your personal circumstances have changed, its validity may be questioned if you signed it many years ago. You will also want to check it on a regular basis to be sure it continues to reflect your views.

Therefore a regular review, after which you sign and date that you have reviewed it, is advisable. The frequency with which you do this will depend on your particular circumstances and state of health. Make a note of who has copies of your advance directive so you can tell them if you revise it.

You can change your advance decision at any time while you still have capacity to do so. This can either be verbally or in writing (unless it is a decision to refuse life-sustaining treatment), but to avoid uncertainty it is advisable to record the changes in writing if possible. Any changes to an advance decision to refuse life-sustaining treatment must be in writing and follow the legal requirements mentioned above.

## 6.22 How to cancel an advance decision

You can cancel an advance decision at any time while you still have capacity to do so. The cancellation does not have to be in writing; a verbal statement cancelling the decision should be respected. To avoid the risk that the relevant people do not know you have cancelled your decision, it is advisable to put the cancellation in writing, if possible, and to inform everyone who was aware of the decision's existence. You should destroy the original document, or mark on it that it has been withdrawn.

## 6.33 The relationship between advance decisions and Lasting Powers of Attorney

The Mental Capacity Act brings in a new system of **'Lasting Powers of Attorney'** (replacing Enduring Powers of Attorney). You can set up a Lasting Power of Attorney (LPA) to give one or more people the power to make decisions about your personal welfare, including medical treatment, if you do not have mental capacity to make the decision yourself.

If you have made an advance decision refusing treatment this will become invalid if you later create an LPA giving someone else the power to refuse medical treatment on your behalf, when you no longer have capacity to make that decision yourself.

If you make an advance decision after creating an LPA, this will overrule the LPA. Your attorney cannot make a decision about treatment which you have made an advance decision to refuse, as long as the advance decision was made after you signed the LPA.

### **6.34 What happens if there are disagreements about an advance decision?**

The senior healthcare professional treating you is responsible for making the decision as to whether there is a valid applicable advance decision. If there is a dispute over this, an application can be made to the Court of Protection.

The Court of Protection can make a declaration on:

- whether the person has mental capacity to make the decision themselves at the time it must be made (in which case, the advance decision does not come into play)
- whether the advance decision is valid. If you create a Lasting Power of Attorney (LPA), you could record an advance statement in the LPA document. An LPA can be used if you want to give someone else, or more than one person, the power to make decisions about your care and treatment if you are not able to do so yourself. Your attorney(s) must take your advance statement into account when deciding what is in your best interests. See below for more information about LPAs
- whether the advance decision is applicable to the particular treatment and circumstances

The Court of Protection cannot overturn a valid and applicable advance decision; so it cannot order that treatment should be provided if this has been refused in a valid advance decision.

## Section 7 - Probate

### 7.1 What Do I Do When Someone Dies?

The loss of a friend or loved one can be a very stressful time with many people needing to be notified in the first few days.

In addition to the immediate tasks you need to attend to, such as arranging the funeral, there is a lot of paperwork to be dealt with and official documents which need to be completed over the next few weeks.

### 7.2 Let Us help

One of the duties you may have to undertake is applying for Probate. This can often be a complex and extremely time consuming process and needs attending to at a time when you may not feel able to perform this task.

Alan Hill Wills and Trust Planning and the professionals that we work with are experts in dealing with all aspects of Probate.

Our Partner's specialist Probate Team have a sympathetic and patient approach when dealing with bereaved relatives and will happily arrange a visit to discuss your requirements in the comfort of your own home.

Unlike Solicitors and many other Legal companies who charge an hourly rate, Our Partner provides a **Fixed Fee Probate Service** which is quoted in advance of any work being undertaken.

This means a considerable saving on the fees you would typically need to pay a high street Solicitor.

As part of the Probate Service our team can also offer you independent advice on the Will itself and may, under certain circumstances, recommend that a Deed of Variation be set up in order to vary the Will. This process would effectively ensure that the beneficiaries of the Will receive as much of their inheritance as possible, without having to pay out large chunks of it to the Inland Revenue in taxes.

This process must be executed within two years of death and needs to be with the agreement of all the beneficiaries.

### 7.3 Who do I notify first?

When someone dies it can be a very difficult and confusing time and you cannot be expected to do everything right away.

### 7.4 In the first five days it is important that you do the following:

- notify the deceased's family Doctor
- contact a Funeral Director to commence funeral arrangements (you will need to check any Will for any special requests or Pre-Paid Funeral arrangements which may have already been made)
- register the death at The Registry Office
- advise any departments who may have been making payments to the deceased, such as Tax Credits, benefits, pensions etc

### 7.5 As soon as possible you should:

- contact the Executors of any Will to enable them to start the process of obtaining **Probate**
- if there is no Will the you should decide who will apply to sort out the deceased's affairs and apply for Letters of Administration.

You will also need to contact relatives and people close to the deceased for a full list of who to contact go to <http://www.direct.gov.uk/> select **Government Citizens and Rights** – then **Death and Bereavement** and **What to Do After A Death**.

### 7.6 If the person who has died leaves a will

In this case one or more 'executors' may be named in the will to deal with the person's affairs after their death. The executor applies for a 'grant of probate' from a section of the court known as the probate registry. The grant is a legal document which confirms that the executor has the authority to deal with the deceased person's assets (property, money and possessions). They can use it to show they have the right to access funds, sort out finances, and collect and share out the deceased person's assets as set out in the will.

### 7.7 If the person who has died didn't leave a will

If there is no will, a close relative of the deceased can apply to the probate registry to deal with the estate. In this case they apply for a 'grant of letters of administration'. If the grant is given, they are known as 'administrators' of the estate. Like the grant of probate, the grant of letters of administration is a legal document which confirms the administrator's authority to deal with the deceased person's assets.

If someone dies without making a will, they are said to have died 'intestate'. If this happens, the law sets out who should deal with the deceased's affairs and who should inherit their estate (property, personal possessions and money). This information covers England and Wales only.

When someone dies without leaving a will, dealing with their estate can be complicated. It can also take a long time - months or even years in some very complex cases.

## **7.8 Who can deal with the deceased person's estate?**

Usually a close relative like a spouse, child or parent will have the legal right to sort out the estate of the person who has died.

## **7.9 Applying for a Grant of Letters of Administration**

In order to be able to administer someone's estate you normally need to apply to the Probate Registry for a 'Grant of Letters of Administration'.

On receipt of the grant you become the 'administrator' of the estate. The grant provides proof to banks, building societies and other organisations that you have authority to access and distribute funds that were held in the deceased's name. The overall process is often referred to as 'obtaining probate', though technically this term applies where there was a will.

These grants appoint people known as "Personal Representatives " to administer the deceased persons estate.

## **7.10 When a grant is needed**

A grant is almost always needed when the person who dies leaves one or more of the following:

- £5,000
- stocks or shares
- certain insurance policies
- property or land held in their own name or as 'tenants in common'

In most cases above, the bank or relevant institution will need to see the grant before transferring control of the assets. However if the estate is small some organisations, such as insurance companies and building societies, may release the money to you at their discretion.)

## 7.11 When a grant may not be needed

If the deceased's estate is below £5,000, and doesn't contain any land, property or shares, then it may be possible to deal with it without obtaining a grant. Also, a grant might not be needed if the whole of the estate is held in joint names and passes automatically to the surviving joint owner.

In some cases, for example, where the person who benefits is a child, the law states that more than one person must act as the administrator.

To establish whether the assets can be obtained without a grant, the executor or administrator would need to write to each institution informing them of the death and enclosing a photocopy of the death certificate (and will if there is one).

The personal representative won't be granted probate until some or all of any Inheritance Tax that is due on the estate has been paid.

Applies to England and Wales.

**If the person who died lived in Scotland you must apply for a 'grant of confirmation'.**

## Section 8 - Funeral Plans

### 8.1 Why should I consider a pre-paid Funeral Plan?

Not an easy decision to make, simply because it is not always easy to think about planning your own funeral. A lot of people avoid facing this issue altogether, but there are many reasons why a pre-paid funeral plan could be right for you.

### 8.2 Here are some basic facts which may help you to make up your mind:

- stating your Funeral wishes in your Will is **NOT** binding upon your Executors
- often, people just do not know what their deceased relative or friend wanted
- a Funeral Plan **GUARANTEES** that your wishes will be carried out and that the Funeral Director's services will be paid for at no extra cost to your family
- at a time of sadness, you will have relieved your family of financial and emotional burdens
- those you leave behind will remember your thoughtfulness
- savings in a Bank or Building Society or Insurance is just a sum of money. Your executors are **NOT** obliged to spend it on your funeral and there may not be enough
- your money is safe. It is held with the Funeral Planning Trust with HSBC Trust Company (UK) Limited as custodian Trustee
- the price of a Funeral Plan is in line with the cost of a funeral purchased today. Funeral costs, like everything else, will almost certainly continue to rise in the future
- you can choose a Funeral to suit your requirements across a range of prices
- you will receive a certificate which confirms the funeral you have chosen. It also specifies, if you wish, personal details such as religious requirements, gifts to charities in lieu of flowers, music etc
- you will also receive a booklet which tells your family or executors, all they need to know at the time of your funeral

### 8.3 Which Plan is Right for you?

You can choose a funeral to suit your requirements across a range of prices, or you can pay by instalments if you prefer.

Select a plan from the plan descriptions. We are happy to quote for alternative or extra services.

When you have paid for the Plan, a guarantee is issued confirming that the services of the Funeral Director will be provided as specified, when required and there will never be more to pay for these services.

Included in the price of the Plans are contributions for other necessary expenses or "disbursements" such as cemetery or cremation fees and Clergy fees if applicable. These amounts are based upon national averages and are increased regularly in line with inflation. So most, if not all of the costs will be covered, but they are outside of the control of Funeral Planning Services limited and cannot be guaranteed. Although the amounts covered are based upon cremation costs, they can be put towards a burial instead. You may wish to include a larger amount- simply add the extra cost to the price of the Plan. ( NOTE- if you require burial, the cost of the grave plot is **NOT** included in the Plan price.)

## 8.4 Choose the Plan which suits you best

## 8.5 The Economical

A simple Funeral providing Basic requirements:

- guidance on registration of death and advice on social and religious matters
- collection of deceased within 10 miles\* of the Funeral Director during normal office hours
- care of the deceased. There are no facilities for viewing in this plan
- a plain coffin
- the Funeral Director will make all the necessary arrangements, liaise with the minister and others involved and attend to the necessary administration
- the supply of the hearse with a Funeral director and staff to meet the family at the local crematorium or cemetery. There is no procession in this plan
- a contribution towards other expenses or "disbursements" such as cemetery or crematorium fees and a ministers fee. (see notes above)

## 8.6 The Traditional

This Plan provides what most people expect from a Funeral. It provides all the facilities of the Economical Funeral but, in addition, will provide:

- collection of the deceased within 50 miles\* of the Funeral director, any time, day or night
- care of the deceased in accordance with the wishes of the family and facilities for viewing at the Funeral Director's Chapel of Rest

- a veneered coffin with traditional fittings, gown and interior lining
- a limousine to follow the hearse and a Funeral director and full compliment of uniformed staff. A procession can leave from a private address prior to a Funersal service at a local place of worship, followed by a committal service at a local crematorium or cemetery
- a listing of flowers and charitable donations received

## 8.7 The Classical

A vey high quality Funeral with superior coffin and two limousines. This Plan provides all the facilities of the Traditional Funeral but, in addition, will provide:

- collection of the deceased from anywhere in the United Kingdom\*, any time, day or night
- a superior quality coffin
- two limousines to follow the hearse
- a newspaper notice

**\*Excludes any ferry and or toll charges.**

## Section 9 - Costs

### Costs of Legal Services provided by Alan Hill Wills and Trust Planning and associated Partners (Guide only).

<u>Product</u>	<u>Cost</u>
SINGLE WILL - STANDARD	£ 125.00
MIRROR WILL - STANDARD	£ 180.00
SINGLE WILL - NON STANDARD	£ 190.00
MIRROR WILL - NON STANDARD	£ 240.00
SINGLE WILL - DISCRETIONARY TRUST	£ 280.00
MIRROR WILL - DISCRETIONARY TRUST	£ 495.00
STORAGE per year per household	£ 35.00
LPA per person (2 Powers)	£ 360.00
Legal work for LPA - Registration	£ 200.00
GENERAL POWER OF ATTORNEY	£ 150.00
ADVANCE DIRECTIVE per person	£ 125.00
EXECUTOR HELP per person	£ 180.00
DEED OF SEVERANCE per property	£ 180.00
CONVEYANCE per property	£ 595.00
FAMILY TRUST 2006 per person	£ 375.00
CHILD TRUST SINGLE	£ 195.00
CHILD TRUST COUPLE	£ 355.00
PROPERTY TRUST per couple	£ 950.00

PROPERTY TRUST	£ 450.00
ABSOLUTE TRUST	£ 565.00
PRE NUPTIAL AGREEMENT	£ 695.00
ESTATE PLANNING REPORT:	
ONSHORE	£ 695.00
OFFSHORE	£ 875.00
LIFE INTEREST per person	£ 290.00
TRUST DEED per Property	£ 340.00
CHANGE OF NAME BY DEED POLL per person	£ 275.00
PARENTAL RESPONSIBILITY per child	£ 195.00
DEED OF VARIATION	price on request from office
PROBATE	price on request from office
ADDITIONAL TRUSTS OF LIFE ASSURANCE, PENSION DEATH BENEFIT, PROBATE & GIFT TRUST	£ 195.00
IF TRUST STANDS ALONE SAME PROCESSING COST AS A FAMILY TRUST 2006 FIRST TRUST	£ 375.00

Prices for all other work can be individually quoted for. Please note that all above prices will require vat adding and also that there may be fees which are not included on the list but which are necessary for an individual case.

Please request an invoice pertaining to your exact requirements to ascertain the exact cost for the work conducted. These prices are intended as a guide so that you have a rough idea of what your work is likely to cost.

## Section 10 - And Finally

I hope that this booklet has successfully given you a flavour of some of the details which need to be addressed to get a persons affairs in good order. Of course, most of this detail contained in this booklet are provided for you for information purposes and this would not normally concern you. You simply fill in the relevant forms, pay the required fee and let our professionals do the rest.

There are some considerations that I must stress at this point and they are as follows:

1. Alan Hill Wills and Trust Planning are not licensed to give financial advice. If this is required then please let me know - I can put you in touch with someone who can help. No comments made in this booklet or verbally by me should make you think that you are receiving financial advice.
2. I work with a legal Partner who's company will carry out the legal services for which I have introduced to you.
3. Please always conduct your request for any matter directly to me rather than directly to my legal Partner. I will usually be able to get directly to the matter and provide you with the help and assistance that you need.
4. Both I and my legal Partner will do the best that I can to ensure that your wishes are taken into consideration in relation to your needs and desires. However, I will not be held responsible for changes in legislation or any other detail which affects clients wills and trust planning.
5. I do provide other services for clients, including Commercial Business planning and assistance with debt related issues and helping with some aspects of debt negotiation.

Should you wish to contact me at any time, then please write to me at the following address:

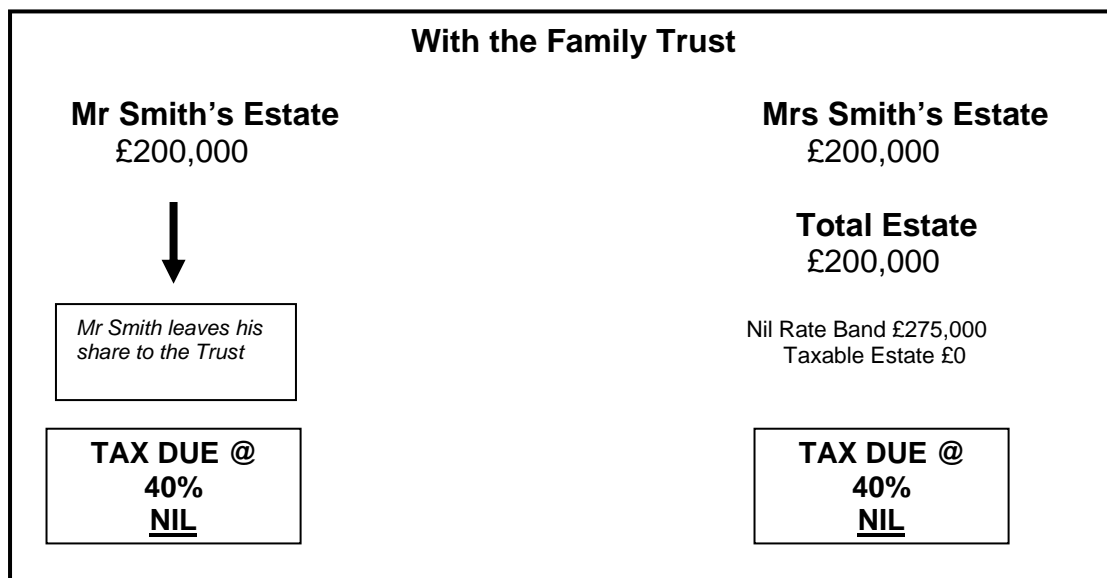
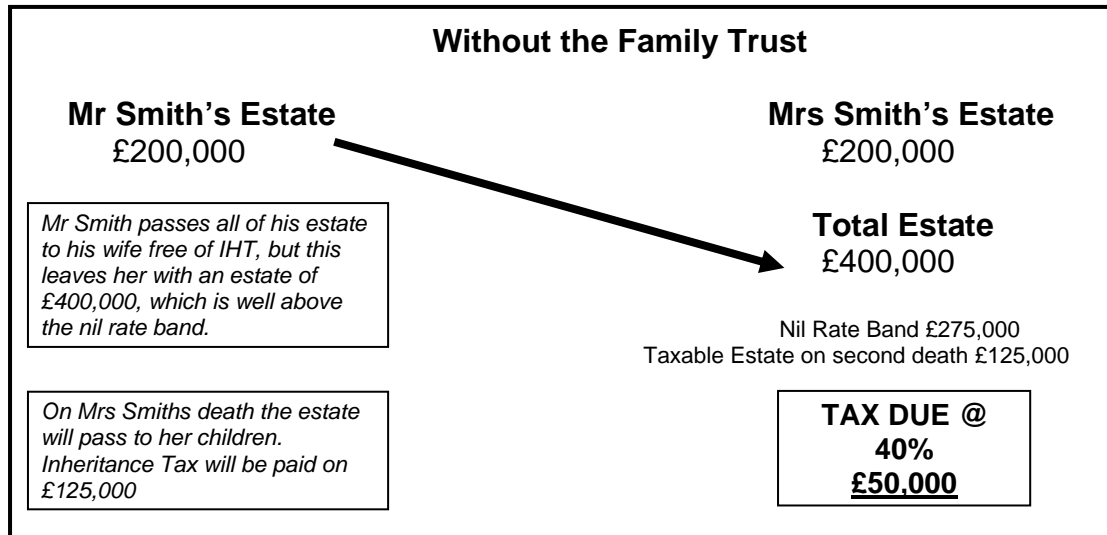
Alan Hill Wills and Trust Planning  
7 Darfield Avenue  
Owlthorpe  
SHEFFIELD  
S20 6SU

or alternatively you can email me at the following email address:

**[admin@regencywills.co.uk](mailto:admin@regencywills.co.uk)**

Thank you for reading and I hope to assist your wills and trust planning in the future.

## Case Study One – Married Couple IHT



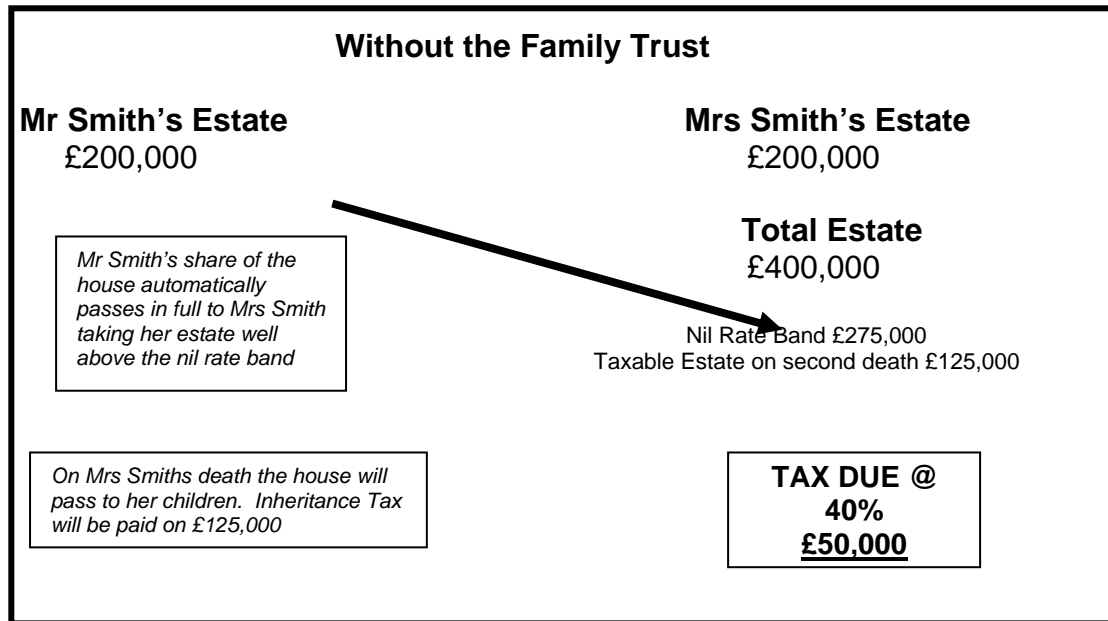
### *How the Family Trust works:*

- Mr Smith, the settlor, controls the trust during his lifetime
- The trust is set up with at least one other trustees, say the spouse, adult children, other relative or professional body
- The spouse is named as a 'potential beneficiary'
- The Family Trust is a 'flexible' (power of appointment) 'interest in possession' trust meaning the spouse can have use of the £200,000 during their lifetime
- All that is required is the consent of a co-trustee
- We recommend using a close friend or relative as a 'soft-trustee'
- Beneficiaries can be a wide range of people with further added to cater for future circumstances eg children, grandchildren. The use of beneficiaries is critical to the trusts long term efficiency

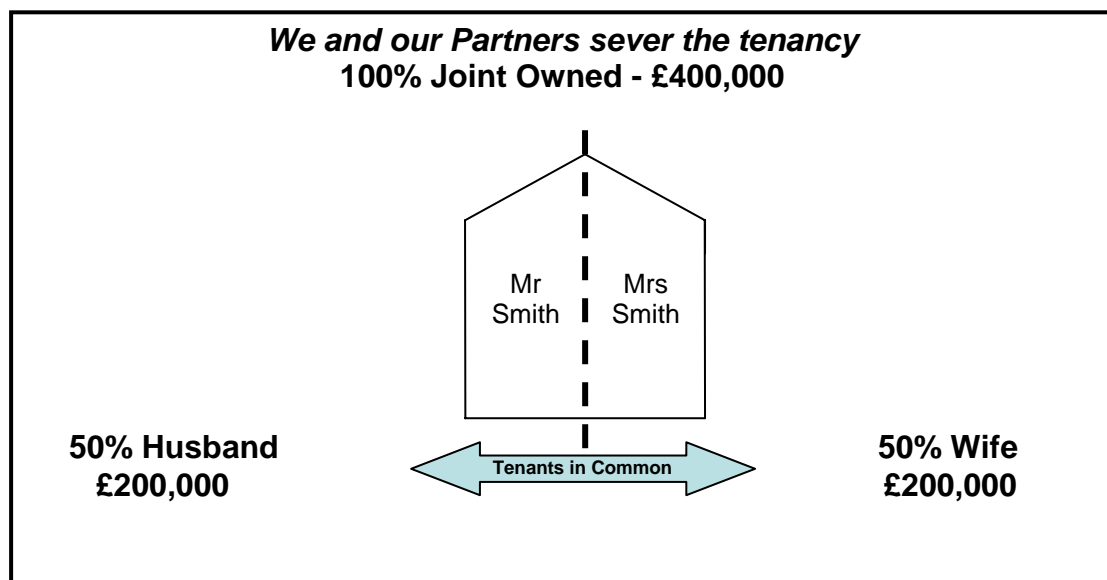
- A settlor can leave a memorandum of wishes to lay out their intent for the use of the monies after death
- Use of funds/property provided as a loan from the trust and therefore does not enter the spouse's estate, protecting the trust funds from IHT, LTC and other third party claims
- The more remote the 'current beneficiaries' (grandchildren/great grandchildren) the more efficient the trust, as the IHT liability is passed through further generations

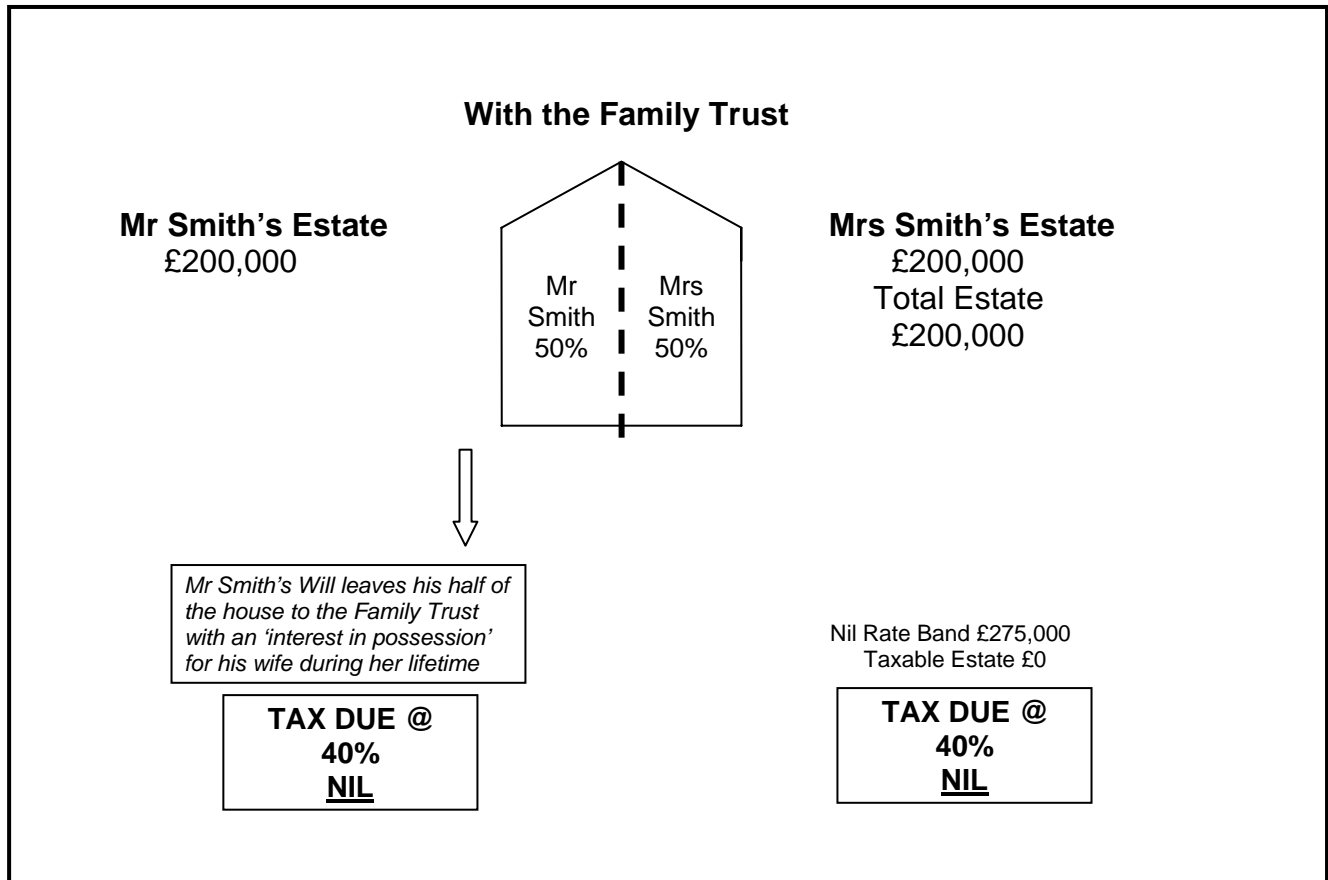
## Case Study Two – Married Couple IHT (property)

- Mr and Mrs Smiths estate is made up primarily of their £400,000 family home
- They own the house *jointly* – i.e. they both own all of the house and
- Upon death of either spouse the survivor assumes full ownership



### Stage One





## Stage 2

### *How the Family Trust works:*

- Mr Smith, the settlor, controls the trust during his lifetime
- The trust is set up with at least one other trustees, say the spouse, adult children, other relative or professional body
- The spouse is named as a 'potential beneficiary'
- The Family Trust is a 'flexible' (power of appointment 'interest in possession' trust meaning the spouse can have use of the house during lifetime
- All that is required is the consent of the trustees, one of which may be the spouse or Countrywide as an impartial professional to ensure the settlor's wishes are maintained
- We recommend using a close friend or relative as a 'soft-trustee'
- It is important to include children/grandchildren as 'current beneficiaries' within the trust
- The more remote the 'current beneficiaries' (grandchildren/great grandchildren) the more efficient the trust as the IHT liability is passed

through further generations – changes of the current beneficiaries may be critical to the future efficiency of the trust, so advice should be sought upon certain future events; death, divorce or marriage of the settlor, spouse or beneficiaries and birth in the bloodline

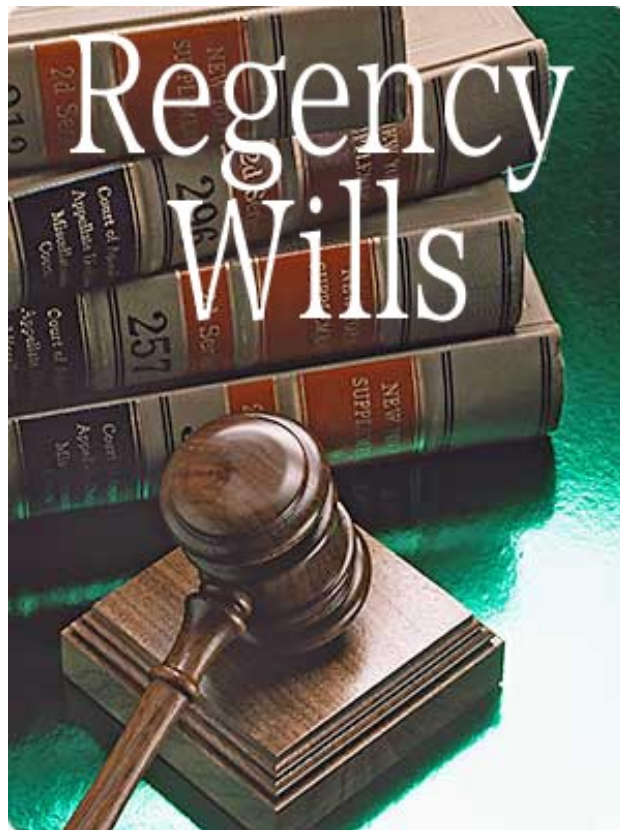
- We advise use of funds/property is arranged via a loan from the trust and therefore does not enter the spouse's estate



**The Planning and Application of the Family Trust has therefore had the following effect:**

- £325,000 is outside the survivor's estate for IHT purposes immediately
- £500,000 is outside the survivor's estate for IHT purposes providing 2<sup>nd</sup> death does not occur within 7 years – even though this is a PET, access can still be achieved for the survivor during lifetime via loans from the trust - at the trustees' discretion
- All growth on the asset is outside of the estate from 1<sup>st</sup> death
- The full £500,000 is protected from the costs of Long Term Care of the survivor and other 3<sup>rd</sup> party claims on the survivor's estate

Should at any time the settlor decide that he/she does not require access to the funds in their own estate prior to first death, he/she can be removed as a potential beneficiary. This then becomes a gift and so triggers the '7 year clock' from that date, and we can mitigate further IHT by utilising the NRB once again from the estate upon death. This additional step can effectively remove **all** the IHT liability of the couple.



Regency Wills provides services via its association with The Countrywide Planning Group who oversee all work conducted and whose legal team provide all documents and Professional Indemnity cover for Regency Wills.