



WILLS & PROBATE

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What happens to a pension after death?

When someone dies, their pension will be dealt with in accordance with the rules of their pension provider. We look at some of the most common scenarios.

After years of contributions, pension pots can contain substantial funds and those who have made the savings will want to be sure they are passed on to their loved ones after death where possible.

Inheritance Tax

The first £325,000 of someone's estate is exempt from Inheritance Tax (IHT). An individual is entitled to take a lump sum from their pension on retirement of 25 percent of the amount saved, free of income tax.

If any of this sum remains in their bank account at the time of death, it will become part of the estate for IHT purposes. It is therefore possible that the lump sum could push the value of an estate over the IHT threshold.

Spending the money or gifting it to beneficiaries may avoid IHT, but if valuable assets are bought, they will still form part of the estate. Any cash gifts made within the seven years prior to death will also count towards the value of the estate for IHT purposes.

Pension pot funds

The pension itself is normally held in trust and as such wouldn't usually be counted when calculating

IHT.

Depending on the pension provisions, it is often possible to leave funds to a beneficiary on death.

Examples include where a joint annuity has been purchased and payments will continue to the other party, usually a spouse or civil partner, or a guaranteed period annuity where payments may continue for a set number of years.

Alternatively, a beneficiary may be left the remaining pension in lump sum form. It would normally pass directly from the pension trustees to the named individual, without ever forming part of the estate, and so IHT would not be payable on the amount transferred.

Pension trustees have a duty to consider the needs of any dependents of the deceased, such as minor or disabled children or a partner, and have discretionary power to give funds to support those who need it.

It is possible that if the trustees could not reach a decision on distribution of the funds, they could pay the money to the estate, in which case it would be assessed for IHT purposes.

To fully understand what will happen to your pension funds in the future, you should speak to your provider and see what rules are in place and what options are available for passing funds on to your chosen beneficiaries.

What does it mean when a Will is made under undue influence?

If someone exerts undue influence over another person so that they amend or make a Will in their favour, it can be legally challenged in court.

We take a look at what undue influence is and how you can avoid your Will being challenged in this way.

What is undue influence?

In respect of a Will, undue influence is coercion that causes someone to write a Will that is favourable to the person exerting the influence.

While people have the right to leave their assets to whoever they choose, their choice should be freely made. The courts have suggested that a testator may be 'led but not driven'.

Where it can be established that there has been coercion, which is defined as more than just persuasion, or someone has made false representations to gain benefit from a Will, this is classed as undue influence.

Warning signs of undue influence

There are a number of signs which may give cause for concern that someone making a Will has been under undue influence. These include unexpected or last minute changes to a Will, wishes that are different to those expressed before, adding someone new to the Will or substantially increasing the share of someone named in the Will, particularly when the person making the Will was dependant on the beneficiary at the time of writing the Will, and where the person making the Will was ill, confused or likely to be susceptible to coercion.

Challenging a Will for undue influence

The law allows challenges to a Will on the grounds of undue influence from the following people:

- The deceased's spouse or civil partner;
- A child of the deceased;
- A partner living with the deceased for the two years prior to death;
- Someone financially dependent upon the deceased.

Legal disputes after a death can be lengthy and upsetting. They can also severely deplete estate funds. There are several measures that can be taken to minimise the possibility of legal action.

Firstly, it is important that a Will is properly drafted so that it is clear and unambiguous. A solicitor will be able to give evidence that you understood your actions and were not being unduly influenced.

If possible, you should explain your decisions beforehand to those affected, so that the Will does not come as a surprise. You could also leave a Letter of Wishes with your Will setting out your reasoning. This document would be taken into account by the court in the event of any dispute.

If you would like to discuss Estate & Tax Planning, call David on 020 8670 0917 or email him at: david@marcus-bishop-associates.co.uk.

