



ESTATE & TAX PLANNING

August 2020



What happens to my children if I die?

Although not a pleasant thought, when planning for the future it is not just the financials that need to be discussed. If you have children, what happens to them if the worst should happen should be considered, such as who will look after them and where they will live?

When guardianship is entered into a will as a clause, this is known as 'testamentary guardianship'. This is not something that can be decided whilst you're sat with the person drafting your will. It should be discussed beforehand and the persons you would like to nominate involved in the conversation.

Another consideration is who has parental responsibility. It should be recognised that unmarried fathers will only obtain parental responsibility if they are registered on the birth certificate, there is a parental agreement between the mother and father or a court order.

If there is a dispute about where the children are to live, the courts will look first to those who have parental responsibility. If you are no longer with the other parent to your children, even if your children have had no contact with them, they will continue to have parental responsibility and the children may be placed in their care, if no other provision is made.

It is therefore important to appoint a guardian of your choice in your will, which will give them parental responsibility.

Alongside the guardianship being decided, you will need to ensure that there will be finances available to help raise the children. As each situation is

It is important to review your will regularly, as both your situation and your appointed guardians' situations, may have changed. For example, you may have appointed your parents as guardians, which may have been good whilst your children were small, but will they be able to take on teenagers later in life?

You must also ensure that you appoint those who you trust to bring your children up. In a will you cannot insist how your children are raised, however you can leave an 'expression of wishes' alongside the will that can give guidance. Marcus Bishop Associates will also be able to help you with this.

Lasting Power of Attorneys for business

There has been much focus on Lasting Power of Attorney's (LPAs) recently, especially as they are important for those who have lost capacity and require people they trust to manage their affairs. There has been less talk about LPAs for businesses which can provide protection for a business owner, providing a safety net should something happen.

Without an LPA in place, the Court of Protection will need to appoint a deputy, which can take time, meaning a business could quickly end up without access to bank accounts or with the ability to make important decisions. It is also expensive for a deputy to be appointed, which can cause further stress to the business.

If a business LPA is in place, the nominated person, the attorney, will be able to temporarily take over the running of the businesses with the ability to deal with important decisions and sign contracts.

Although unlikely to be used, having an LPA in place can ensure that not only is the business kept running, those who rely on the business remaining stable, such as employees and suppliers, will have their roles secured.

An LPA does not mean that the attorney will remain permanently; they are required to "so far as reasonably practicable, permit and encourage the person to participate, or to improve their ability to participate, as fully as possible in any act done for them and any decision affecting them." This means that a business owner will be involved in decision making.

The fee for the preparation and registration of a business LPA is low in comparison to the costs and delays that your business will encounter if you lose the capacity to make decisions for yourself.

Benefits of leaving a charity legacy

Many people like to leave a gift to charity in their Will by way of a legacy which not only benefits the charity but also has tax benefits for the donor.

When an estate is valued at greater than £325,000 or more it becomes liable for Inheritance Tax, which is charged at 40%.

By leaving a gift to charity it is possible to reduce the amount of inheritance tax paid on the chargeable part of the estate.

Bequeathing a specific gift to a charity, such as a certain asset or amount of money, means the financial value of the gift will not be included when calculating the inheritance tax on the estate.

For example, by leaving £10,000 to charity, not only will the charity benefit, the estate will have reduced its liability by £10,000 potentially saving £4,000.

If you wish to make a sizable donation to charity through a legacy, by leaving 10% of your 'net value' (this will be dependent on circumstances such as being married and gifts made during a lifetime), the amount of tax liable will be reduced from 40% to 36%.

It is also possible to nominate a specific purpose for any legacy you leave by including a wish on how the money should be used. In such cases care should be taken in the drafting. If the purpose of the legacy is too restrictive, the charity may be unable to use it, meaning they have to apply to the Charity Commission to allow the money to be used for other purposes.

Inheritance Tax calculations and estate planning can be quite complicated and we recommend that you discuss your circumstances with Marcus Bishop Associates. We will be able to advise you on potential issues, such as a family member contesting the legacy if they feel they have not been reasonably provided for, particularly if they have been financially dependent on you.

They may also contest on basis that they feel the legacy was written under undue influence or that you were not of sound of mind whilst making the gift. This could leave the gift or even the entire Will being declared invalid.

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