

A Guide to Estate Planning and Protecting Your Family

Enhancing people's lives



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FINANCIAL ADVISERS

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Ellis Bates are here to enhance people's lives by delivering peace of mind, enabling financial freedom and helping clients achieve their goals.

Making a Will

Making a will is your first essential step in estate planning. If you have no will, you will die intestate, and these rules dictate how your will is then distributed. Intestacy rules state distribution of your estate will be determined by the number of family members and their relationship to you including if they are 'blood' relatives. This may not reflect how you would have chosen your possessions to be allocated.

You may also be deemed to have died intestate if your will is invalid: reasons include the will is not signed, not witnessed correctly, cannot be located on your death, or you have remarried. It is vital to keep your will up-to-date and formally drafted to give you peace of mind that all your assets and estate are covered and passed to the right people.

Benefits of having a will:

- Allows you to pass your estate to your chosen beneficiaries
- Allows you to nominate your chosen executor to handle your estate on your behalf
- Affords peace of mind of making provisions for your loved ones
- Allows you to put a guardianship in place for children under the age of 18 years
- Allows non-trust based property to pass through probate

Probate

Applying for the legal right to deal with someone's property, money and possessions (their 'estate') when they die is called 'applying for probate'.

It is a common misconception that probate is not needed, if the deceased has left a will, as in most cases you will still have to go through the probate process.

There are some exemptions, and some banks allow up to £30k in assets before probate is needed but generally if you own a property and are leaving 'an estate', probate is needed.

How to apply for probate

www.gov.uk/applying-for-probate

On applying you will receive a document that allows you to start dealing with the estate.

If the person left a will you will receive either:

- A 'grant of probate' or
- 'Letters of administration with will annexed', if the will does not name an executor or the named executor is unable to apply

If the person did not leave a will, you will receive 'letters of administration'

The Tell Us Once Service (link below) is a tremendously helpful free service which you can make use of when you register the death and will automatically inform a whole range of organisations, saving you a great deal of time and effort.

www.gov.uk/after-a-death/organisations-you-need-to-contact-and-tell-us-once



Your estate is comprised of everything you own but one thing is for certain – you cannot take it with you when you die.

When the inevitable happens, you may want to make sure that as much of your estate reaches your heirs, rather than being depleted by tax beforehand. Rising house prices and a recovering economy means tens of thousands more families will be hit with Inheritance Tax bills, making it essential to plan ahead.

“If you do not have a plan, the law and the taxman have one for you. But you may not like it.”

Mark Chandler, Head of Estate Planning

Trusts

You can establish a trust during your lifetime or, through your will, on your death. You can appoint trustees of your choice (this can include you and your spouse during your lifetimes) who will manage the trust on your behalf. Following your death, the trustees will act with consideration to your wishes.

Trusts offer several benefits:

- On your death, the trust asset can pass to your chosen beneficiaries with no need for probate
- In certain circumstances, trusts can protect your assets from creditors
- You can control who benefits from your assets during your lifetime and on your death
- Depending on how the trust is structured, it is possible to invest your assets into a trust to mitigate inheritance tax, income tax, and capital gains tax (principle private residence relief)
- Protect your estate against potential future care fees

You may also wish to reserve some influence over your assets for the trustees to observe after your death.

For example:

- You may want to delay the age at which beneficiaries inherit
- You may want your heirs to receive their inheritance in stages
- You may be concerned about your heirs getting divorced and want to protect the assets inherited from you being included in a divorce settlement

Trusts can also be useful in preventing assets reaching a beneficiary facing insolvency proceedings and those making poor lifestyle choices, such as involvement in alcohol and drugs.

Property Protection Trust

Owning your home as tenants in common rather than joint tenants provide additional planning opportunities. This can potentially protect inheritance in terms of residential care fee assessment and marriage following bereavement.

A property protection trust is put in place so that the half share of the family home belonging to the first person to die passes into the trust (also known as a life interest trust). This allows the surviving spouse to benefit from the share of the house during their lifetime. Following the surviving spouse's death, the property can then be passed on to either children or loved ones. By putting this trust in place, you are ensuring your assets are going exactly where you want them to go and giving you total peace of mind.

The benefits of a property protection trust are:

- Each spouse now owns 50% of the property
- Each spouse grants the surviving spouse a 'right to reside'
- Allows you to pass your property to your chosen beneficiaries
- Each spouse can gift their 50% as they see fit (both halves of the property do not have to go to the same beneficiaries)
- Allows you to nominate your chosen Executors/ Trustees to handle the property on your behalf
- Can be used as a tool for planning for care home fees

Please be aware that should the survivor remarry, not make a new will and then die, intestacy rules would see the new spouse taking a disproportionate amount of the estate. By severing the tenancy and creating a life interest trust in your wills (for the surviving spouse), this means your assets are going exactly where you want them to go and giving you total peace of mind. To preserve the residential nil rate band, property needs to pass to direct descendants.

Whole of Life Cover – Written in Trust

Insurance policies can help with Inheritance Tax (IHT) by paying out a lump sum that your beneficiaries can use to pay the liability. With whole of life insurance, the level of cover can be set to match all or part of the inheritance tax you anticipate your heirs will suffer on your death, thus protecting them from the liability. The cost of cover is dependent on your age and health. Although it can be an effective solution, it is not for everyone and you will need to be able to afford the premium.

Discounted Gift Trust

A Discounted Gift Trust (DGT) is a trust-based IHT planning arrangement. It is for those individuals who wish to undertake IHT planning but who are unable to lose full access to their investment. In a DGT, access is typically provided by means of a series of pre-set capital payments to the investor who will be the settlor of the trust.

The term 'discounted' is used because the value transferred on establishing the trust is less than the amount invested. This is the logical consequence of the fact that the settlor is entitled to a stream of capital payments. The settlor is typically entitled to payments on specified dates subject only to be alive on those dates. The settlor's transfer or gift is the bond/policy premium less the value of the payments receivable during his/her lifetime.

Assuming the settlor survives 7 years from the date of investment, the trust fund is considered to be outside of the estate.

Wealth Preservation Trust

The Wealth Preservation Accounts (WPA) are arrangements designed to save inheritance tax. They allow a client to gift money into trust to reduce their potential inheritance tax liability but also allows them predetermined access to annual payments (if required) to supplement their income. On inception, the Account is immediately assigned into a bare trust and then into a discretionary settlement.

The benefits of a WPA are similar to the gift trust, however the initial discount (percentage immediately moved out of the estate) is not available. Income flexibility, however, is much greater with the WPA.

To be effective for IHT purposes a 7-year survival period is needed.



Lasting Power of Attorney (LPA)

If you are married or in a civil partnership, you may have assumed that your spouse would automatically make decisions about your finances, pensions and healthcare, if you lose the ability. This is not the case. Without an LPA, they will not have the authority to do so.

An LPA is a powerful legal document that allows you (The Donor) to appoint a person or people of your choice (Attorney/s), to look after your affairs should

you be unable to make decisions for yourself because of mental or physical incapacity. If you do not have an LPA and become incapacitated, your family will need to apply to the Court of Protection to become a deputy, which is costly and time-consuming with no certain outcome. There are two types of LPAs, a health and welfare attorney and a property and financial affairs.

Health and Welfare Attorney

A health and welfare attorney can make decisions on elements such as:

- Medical matters (e.g. consent to medical treatment) and access to medical records
- Dealing with the Donor's personal paperwork including legal records
- Where and who the Donor should live with and who they have contact with
- The Donor's day to day care such as what to eat and what to wear
- Whether the Donor should take part in any social, leisure or educational activities
- Complaints about the Donor's care or treatment

Property and Financial Affairs Attorney

A property and financial affairs attorney can make decisions on elements such as:

- Buying or selling a property
- Paying the Donor's mortgage, rent and household expenses
- Paying for private medical care and residential care or nursing home fees
- Operating bank accounts and investing the Donor's savings
- Using the Donor's money to buy a vehicle or any equipment or other help needed
- Claiming and using all benefits, pensions, allowances etc
- Receiving any income, inheritance, or other entitlement
- Dealing with tax affairs

“Ellis Bates have been thoroughly professional and responsive to my financial needs and long term estate planning”

Guardianship

When making a will, most people focus on what will happen to their assets when they die. But if you have children, it is also essential to consider who would care for them if you were no longer around.

Parents who have Parental Responsibility can appoint a Legal Guardian to care for their children if they die while the child is under 18. The requirements for formally appointing a Legal Guardian is very similar to the requirements of putting a will in place.

For example, it needs to be in writing and signed in the presence of two witnesses and it is for this reason that many people incorporate their choice of Legal Guardian within the terms of their will.

Discretionary Trust Wills

A Discretionary Trust Will allows you to appoint trustees to manage inheritance on behalf of vulnerable loved ones who require assistance.

Benefits of a Discretionary Trust Will:

- Guarantees that vulnerable people are given assistance in the management of their inheritance
- Reduces the risk of state benefit entitlements being compromised by the receipt of inheritance
- Potentially helps unmarried couples with Inheritance Tax planning



Inheritance Tax

IHT is paid at 40% on the value of the assets that you leave when you die, above certain limits. Most people's estates are assessed for IHT on death, but the tax can also be chargeable and payable during your lifetime on the transfer of assets, particularly transfers into some types of trust. If you are married or have a civil partner, you can leave your entire estate to your partner free of IHT, but anything left to family and friends may be taxed.

Currently, the first £325,000, or £650,000 for married couples, is exempt. This is known as the personal exemption or nil rate band. Only amounts above those levels will be liable to IHT. However, other chargeable or potentially exempt transfers can impact the estate.

Examples of Inheritance Tax

Value of estate on death	Single Person	Married Couple (due on 2nd death)
Up to £325,000	£0	£0
£500,000	£70,000	£0
£750,000	£170,000	£40,000
£1,000,000	£270,000	£140,000
£3,000,000	£1,070,000	£940,000

In addition to the standard nil rate band, there is a residence nil rate band (RNRB), available when you leave residential property to direct descendants. This was introduced at £125,000 in 2018 to 2019, £150,000 in 2019 to 2020 and £175,000 in 2020 to 2021. Just like the standard nil rate band, any

exemption unused on the first death of a married couple or civil partners could be transferable. The rules which apply to qualification of the RNRB are complex and it is important to take professional advice based upon your own circumstances.

“I could not have a better company looking after me, I would certainly recommend them”

Gifting

You can reduce IHT by gifting during your lifetime. Some gifts are always IHT free, including those between spouses or civil partners. HMRC also allows certain small gift exemptions: £3,000 a year (plus previous year if not already used), marriage gifts £5,000 for parents and £2,500 for grandparents and small gifts of up to £250 to any number of people. It is possible to make gifts from net income, providing you can show you can maintain your lifestyle.

Although regular gifting can reduce an IHT problem, in many cases, it has little impact given the size of the estate and the rate at which it is growing.

Larger gifts which did not meet the exemption criteria are referred to as potentially exempt transfers. These are unlimited and free of inheritance tax on death, providing you survive for seven years after making the gift.

Gifts into some trusts are classed as chargeable lifetime transfers and may lead to an immediate tax charge at the date you make the gift. Gifts during your lifetime into a discretionary trust are probably the best example. Cumulative gifts over a 7-year period of up to £325,000 per person into discretionary trusts do not result in an immediate tax charge. However gifts above this level may attract initial, decennial and exit tax charges.

If you decide to leave at least 10% of your net estate to charity, the taxable element of your estate will pay tax at 36% rather than the usual 40%. The charitable element itself is tax-exempt.



Business Property Relief Scheme (BPR)

BPR was first introduced in the 1976 Finance Act and its main aim was to ensure that after the death of the owner, a family-owned business could survive as a trading entity, without having to be sold or broken up to pay an inheritance tax liability. Over time, successive governments recognised the value of encouraging people to invest in trading businesses regardless of whether they run the business themselves.

When an investment qualifies for BPR, the asset can fall outside the estate for IHT purposes after just two years. This kind of arrangement could be particularly beneficial for those with an IHT liability and whose age or health may preclude planning using gifting strategies such as potentially exempt transfers and trust arrangements. Both require a survival period of 7 years from date of investment.

Investment into a qualifying BPR plans provide the following benefits:

- 100% inheritance tax free for BPR qualifying investments held 2 years and until date of death
- Full access to capital if circumstances change
- A two-year survival period to secure IHT relief
- If death occurs within 2 years a surviving spouse or civil partner can hold for the remaining unexpired period and until death

Enterprise Investment Scheme (EIS)

The Enterprise Investment Scheme (EIS) was introduced by the government in 1994 to encourage the funding of small-medium enterprises (SMEs) by offering attractive tax advantages for investors. EIS investment vehicles can be a great way to support the growth of these companies and, in turn, the UK economy.

You have the potential to claim 30% income tax relief on investments up to £1 million in the current or previous tax year, subject to income tax liability, personal circumstances and a three-year holding period.

If you have a capital gains tax bill due you can defer paying the tax on any gain realised for up to three years before, or one year after the date your EIS shares are allotted. 100% of your investment can qualify for IHT relief if you hold the shares for at least two years and at death.



HOW WE HELP OUR CLIENTS...

"We've dealt with Mark for the last couple of years regarding my parents' finances. He has been really helpful and supportive, especially given the complexity of our family situation. He always ensures he follows up (after talking to myself and my brother) with a call to Mum, checking in with her to make sure she understands and is happy with what has been discussed. My Dad has dementia and is no longer able to take part in the conversations, but Mark met Dad at an initial meeting and was very sensitive and appropriate given his additional needs. I've really valued Mark's personal, professional approach - thanks!"

"Extremely happy with the service and Nicky Matheson especially, I have always found her to be extremely helpful in not only dealing with my financial affairs but also in helping me getting my will and power of attorney sorted out. Always feel like I'm talking with a friend whenever I need to speak with her about anything... five-star service always."

"I use Ellis Bates primarily to manage my pension. Over the last ten years they have been superb. Regularly keeping me informed and supporting me with sound professional advice. I could not have a better company looking after me. recently Ellis Bates have helped in my wife and I's updated wills and also Power of Attorneys for future peace of mind for our children. We would certainly recommend them."

"Ellis Bates has been looking after my pension fund and other investments for well over 20 years, they have been thoroughly professional and responsive to my financial needs and long term estate planning."

With offices throughout the UK your Adviser offers face to face, video and telephone meetings, tailored to your preferences and schedule.

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