

Wills, Inheritance Tax and Passing on your Money

This section covers **Wills, Inheritance Tax, Gifts and Exposure to Care Costs**

Wills

Making a Will

There is plenty of advice available on why it is important to make a will and how to do so – search the internet to find appropriate guidance.

Finding and storing wills and other key documents

You would be surprised at how common it is for relatives not to be able to find a will at just the point when the person they were caring for is unable to tell them.

Many people will have made a will a long time earlier when buying their first home or when their children were born. They may not remember where it is. Even if they do know, the solicitor who took charge of it may in the meantime have retired, moved premises, merged with another firm or gone out of business. (If this is the case and the original of a will cannot be traced, you should contact the Law Society for advice).

Ideally if you are going to have responsibility for someone's estate you should know where the original of their will is, know how to get hold of it when it is needed and also make sure that there are one or more copies (with a note stating where the original is).

Remember it is better to ask these simple practical questions while you still can rather than later on in a crisis. You might also venture a question about where the deeds to the house are (if the mortgage is paid off), although for houses bought more recently this is not so important as the Land Registry now has searchable electronic records.

It is normal practice for the original of a will to be stored securely, for instance with a solicitor or bank (but check charges first). Copies are generally kept at home.

Top Tip

A good place for storing important documents such as wills and deeds is a fireproof filing box (available from most large stationers). If it's a lockable box best to find out the combination code/where key is kept!

One final point. In researching where a will is, be careful to check that it is the most recent one - probate requires the *last* will and testament. If it doesn't look as if it was drawn up by a solicitor, make sure you check it is legally valid.

Passing on Money and Assets

Many people understandably worry as they get older about passing on as much of their money and assets as they can after their death. Generally, the two key concerns in this regard are firstly, inheritance tax and secondly the possibility of having to sell their house in order to pay for care in old age.

Inheritance Tax

The inheritance tax threshold for a single person stands at £325,000 in April 2017. If the value of an estate exceeds this amount, inheritance tax kicks in at a rate of 40% (or 36% if you leave at least 10% to charity).

For a couple who are married (or in a civil partnership) the inheritance tax allowance can be double this - £650,000. This would be the case if the first of the couple to die left everything to their spouse or civil partner (and the partner has their permanent home in the UK). In these circumstances the first estate will generally be completely exempt from inheritance tax, however much is passed on.

As the inheritance tax threshold hasn't been used, provisions included in the 2008 Budget mean that the surviving partner can have the allowance transferred to their own estate when they die, even if they remarry. So, the second person to die could have an inheritance tax threshold of up to £650,000 - twice the usual amount (and if they married more than once it could be even more). Hence the particular importance for couples of making a will that transfers their assets to the other partner on their death.

Two pieces of good news here for those managing the estate. It doesn't matter how long ago the first partner died – even if it was before the changes allowing the transfer of allowances came into force, the provision still applies

Secondly, although you are likely to be asked to produce the first will to prove that the estate was transferred to the other partner, you won't have to turn the house upside down to find it! All wills that have gone through probate are kept as public documents and can be accessed through the probate office for a nominal fee.

A further provision announced in 2015 and being gradually rolled out by 2020 enables parents or grandparents to leave a family home of up to £1m to their descendants (provided both allowances are used as above). There are claw backs when the total estate value exceeds £2million – <http://www.moneysavingexpert.com/family/inheritance-tax-planning-iht>

For the small number of estates that are likely to exceed allowable thresholds, there are options to leave money to charity that would otherwise be paid in tax or to use tax planning mechanisms, although many are complex and don't always have the desired effect of reducing tax liabilities. It is always best to seek professional advice.

Gifts

Some people choose to reduce their exposure to inheritance tax by making gifts during their lifetime. In general it is possible to give away £3,000 per year with no tax liability. More than this would count as part of the estate for inheritance tax purposes although not if the gift was made more than seven years before the person died (and for any such larger gifts made less than seven years ago there is a tax taper). In addition to the £3,000 annual allowance, it is worth noting that parents can make tax free gifts of £5,000 to a couple on their marriage and grandparents can give £2,500. There is also a provision for individual small gifts of no more

than £250 to be allowed without counting towards the £3,000 allowance. Full details are on the gov.uk website <https://www.gov.uk/inheritance-tax/gifts-and-exemptions>

Do be aware that while it is nice to receive gifts, whoever is filling in the inheritance tax form in the future has to account for them. This applies not just to the amount of the gifts, and the recipient, but because of the seven year rule, the dates they were made too.

A rather larger gift that some people consider is to gift their home, say to their children. This might be either as a way of reducing inheritance tax liability or because they are worried that having a large capital asset will mean they will have to pay for their own care in old age – perhaps even having to sell the family home to pay for care.

Mitigating inheritance tax by gifting your house is complicated and depends in part on the way you do it – see <https://www.gov.uk/inheritance-tax/inheritance-tax-planning-passing-on-property> for further information on this. Again it is always best to take professional advice when considering a step as big as gifting your house.

Passing on your house because of future worries about care costs is also fraught with pitfalls. More below, including recent policy changes which put an upper limit on exposure to care costs.

Exposure to Care Costs

The first thing to mention is that there is a kind of Catch 22 in relation to gifting your house to mitigate future exposure to care costs. It is the Local Authority who assesses your liability for contributing to care costs (assuming it is social care, not continuing health care). Under the “deprivation of assets” rule (this is the Catch 22) even if you have given away your house the Local Authority will treat you as still owning the property for the purpose of their means test, unless you can establish that at the time of the gift

- (1) you were in good health and did not foresee that you would require nursing care in the future
- (2) there were valid reasons for gifting the property away

You would be well advised to take advice from a lawyer (and perhaps a philosopher or clairvoyant) on how to demonstrate this.

Again, gifting a property for this purpose can have other unintended consequences which you would be wise to investigate. For further detail see <http://www.myageingparent.com/care-home-fees-and-protecting-your-home/>