



estate planning  
and asset protection





# estate planning and asset protection

"Every man is entitled, if he can, to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be" Baron Tomlinson IRC v Duke of Westminster (1936)

Many people want to ensure that the wealth they have amassed over their lifetime regardless of whether this is £50,000 or £5,000,000 passes to their chosen beneficiaries, that they mitigate their tax liability and they ensure that third parties cannot interfere with the assets of the family.

It is therefore important when looking at Wills and Lasting Powers of Attorney to also consider a wider estate and asset protection planning strategy.

## lifetime estate planning; what can you do?

Protecting your assets and the inheritance for your loved ones during your lifetime is perfectly legitimate and there are a number of options available.

What is important is to seek advice which is tailored to your individual circumstances rather than a generic "off the shelf" product. These options can include:

- *Taking advantage of your exemptions and reliefs*
- *Gifting*
- *Setting up a Trust*



## exemptions

As a starting point for any estate planning you should take advantage of your available exemptions and, used correctly, they can be extremely effective. These can be summarised as follows:

### Annual Exemption

Each individual can give away £3,000 each tax year.

### small gifts

An individual can make any number of small gifts in each tax year not exceeding £250.

### gifts on marriage

As a parent you can give £5,000 on the marriage of your children, a grandparent £2,500 and indeed anyone else £1,000.

### normal expenditure out of income

This is an extremely valuable relief and, when used correctly, can allow significant assets to pass to your chosen beneficiaries. The relief allows any excess income to be gifted and there is no upper monetary limit. The conditions for the relief are that:

- *The gift must be from excess income (this could be salary, pension, dividends etc)*
- *That the gift cannot affect the normal standard of living of the donor so you couldn't reduce your normal expenditure to have more free income*
- *There should be an established pattern*

## reliefs

In addition to exemptions, there are specific reliefs for assets which pass between spouses or civil partners and well as for some types of business and agricultural property.

Using the reliefs to your advantage is a vital part of the estate planning process.





## what is a trust?

A trust is a relationship which is recognised and enforceable in court. Its details are contained in a trust deed which is rather like a rule book.

A trust has its own bank account, assets and tax reference. When a trust is established it is usually registered with the HM Revenue & Customs. It pays income tax, inheritance tax and capital gains tax.

A trust is governed by trustees. They look after the property deciding what will happen to it on behalf of named beneficiaries. There must be a minimum of two trustees and a maximum of four trustees. It is sometimes not advisable for the settlor (the person making the gift into the trust) to be a trustee.

## responsibilities of trustees

The trustees must always act in the best interest of the beneficiaries. They have very wide powers to act in this way and can take advice in this respect. They have wide powers to invest money, insure property, lease and mortgage it.

The trustees are required to keep trust records and hold trustee meetings on an annual basis. They must also make sure that they carry out the terms of the trust and not go beyond their powers. A trustee must never profit from their role as a trustee and must act impartially and fairly between the beneficiaries entitled to benefit from the Trust now and in the future.

## the terms of the trust

The terms of the trust will be tailored to your individual circumstances. Trusts can last for up to 125 years and can provide a flexible fund for future generations.

Whether you are considering direct gifting or gifting to a trust, it is vital that you considering protecting the gift from any future relationship problems which the recipient might experience and a trust on its own is not sufficient protection. You should therefore make it a condition of your gift / the trust that the recipient puts a cohabitation agreement, or prenup, or postnup in place first.

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## gifting

For larger sums of money, which do not fall into your annual exemptions, to ensure that the value of the gift no longer forms part of your estate, you need to survive for 7 years after making the gift.

The danger with outright gifting is that the funds then belong to that beneficiary and, depending on their circumstances, it may not be appropriate.

## gifts to trusts

Instead of transferring your assets outright you can consider making a gift to a family trust (either discretionary or life interest trust)



# asset protection on your death

If lifetime gifting is not feasible or attractive then we can protect assets upon your death.

## why do I need asset protection on my death?

Many couples, married or not, will wish to guarantee that their estate passes to their chosen beneficiaries after they have both died. If you leave your whole estate to your spouse/partner on your death this is not guaranteed.

## what can happen?

- If your spouse/partner formed a new relationship after your death their new partner and their family could inherit your estate.
- If your spouse/partner had to go into care then your combined estate could be at risk for paying for care
- Your spouse/partner could simply change their Will

## how can I prevent this?

To ensure that your estate passes to your beneficiaries and that it is not at risk from paying for your spouse/partner's care then you should not leave your estate to them.

## but I want to make sure my spouse/partner is provided for?

To protect your spouse/partner and your beneficiaries then you need to include in your Will a life interest trust. This allows your spouse/partner to benefit for the rest of their life (for example live in your house or receive an income) but following their death your beneficiaries receive the balance remaining.

This not only ensures that your beneficiaries inheritance but also safeguards your assets for your future generations.



## how can we help you?

We can help to prepare an estate plan for you which can combine the many facets of estate planning to enable a tailored solution for your family.

To obtain the maximum benefit, it is vital that the elements are considered as a whole and not in isolation.

## how much will it cost?

After our initial consultation, which is without cost or obligation, we will always agree a fixed fee to prepare your estate plan based on your individual circumstances.

Within that estate plan, we will explain our recommendations to you and the cost for undertaking each piece of work. You can then select which aspects you would like to take forward.

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