SK Solicitors | Sedgwick Kelly LLP

Asset Preservation

Planning Service

July 2009

Lawyers you can trust

SK Solicitors
Watford Place 27 King Street Watford Herts WD18 0BY
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Asset Preservation Planning Service

Our Comprehensive Service Consists

Of The Following:-

- Interview comprising detailed discussion of your financial and family circumstances and the Inheritance Tax implications.
- Sending you the initial draft of your Will and other appropriate documents* to implement the Discretionary Trust Scheme and confirmation of our advice in writing.
- Dealing with any queries arising from the draft documents
- Subject to your approval engrossing the documents for signature
- Meeting at our offices for you to sign the Will and accompanying documents in the presence of two witnesses supplied by us
- Sending you copies of all the documents and storing the originals in our strong room free of additional charge

Our charges for implementing the Discretionary Trust Scheme are £500.00 plus VAT, inclusive of all the services mentioned above. If

Severance Notices are not required, our charges will be reduced to £475.00 plus VAT.

*The additional documents may include Notice of Severance of Joint Tenancy (to include registration at the Land Registry) and/or a Letter of Wishes to your Trustees confirming your intentions regarding the distribution of the Discretionary Trust Fund after the first death.

Law believed to be correct at the date of publication but ensure that you check with us before taking any action.

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Asset Preservation Planning Using Wills

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Asset Preservation Planning Using Wills

Many of us are concerned about the possibility of having to go into long term residential care and the financial effect of this on our assets.

A person who is permanently resident in long term care will be expected to pay the full fee if their capital totals more than £23,000.00 (including their share of any joint capital). Between £14,000.00 and £23,000.00 a reduced payment will apply. Only when a person's capital is reduced to below £14,000.00 will Local Authorities pay for care. Special rules apply to the nursing aspect of any care.

Some capital is disregarded or ignored for the purposes of calculating a person's assets, these include the surrender value of life polices or annuities, funds held in trust, personal possessions and in some cases the person's former home.

TREATMENT OF FORMER HOME

A person's former home will only be disregarded if it is occupied by one of the following:-

- Their spouse, civil partner or someone they lived with as if they were married or civil partners
- A relative* over the age of 60 or under the age of 60 if they are incapacitated
- A child under 16 whom the person is liable to maintain

*There is a definition of who constitutes a relative. Please ask if you require more details.

JOINT PROPERTY

Jointly held capital will be treated as being in equal shares (except property). It may therefore be better to have separate bank accounts for example.

SOULTIONS

When trying to preserve assets from being used towards residential care it is necessary to consider the Inheritance Tax implications. The following solutions will mostly be suitable for married couples or civil partners if their total estates are over the nil rate band exemption for Inheritance Tax. (the amount you can have before Inheritance Tax becomes payable is currently £325,000.00). If assets are below the exemption then they will be useful for any couple wishing to preserve assets. The examples also assume that only the survivor in a couple will need residential care.

NIL RATE BAND DISCRETIONARY TRUSTS

It is possible to gift a sum equivalent to the nil rate band to a Discretionary Trust in a Will where the spouse / civil partner or unmarried partner is one of a class of potential beneficiaries. If the assets are then required the survivor can ask the Trustees to loan the money to them in consideration of the survivor agreeing to repay the monies back to the Trust at a later stage. If the survivor has to go into residential care the loan would be repaid to the Trustees at that stage and therefore assets of up to £325,000.00 are protected, or more, if you are not concerned with the Inheritance Tax implications. Otherwise it would usually be paid out of the survivors estate on death but can be repaid earlier, if desired. The consideration given may vary but will usually be either an IOU by the survivor to the Trustees or the Trustees can take a charge over the property which has been loaned.

The survivor will therefore have the best of both worlds in that they can enjoy the assets while they are not in residential care but can preserve a substantial amount of them if the need arises. There is also the added security that the Trustees could provide top up funds to provide a better standard of care if required without increasing the residents capital.

(see example on next page)

This is an example of how the Asset Preservation Trust would work assuming the IOU/Charge has not been repaid to the Trustees when wife has gone into long term care. The example assumes a total estate of £600,000.

1.
Husband and
Wife arrange Discretionary Trust Wills.

2.
Husband dies leaving assets worth £325,000 to Discretionary Trust remainder of £275,000 to Wife.

3.
Wife receives assets worth £325,000 from Husband's Estate in exchange for an IOU*or Charge on property to the Trustees of Husband's Discretionary Will Trust along with the remainder of £275,000, absolutely.

4.
When wife has to go into residential care the £325,000 IOU/Charge can be repaid to the Trustees and invested on behalf of her children.

5.
On Wife's death family receive assets of £325,000 from Trustees of Husband's Discretionary Will Trust and any remainder after care fees have been paid.

*An IOU will attract Stamp Duty Land Tax on the amount relating to real property.

Tax Implications Of Setting Up A Nil Rate Band Discretionary Trust In Your Will

Income Tax:

Any income earned on monies held in a Discretionary Trust will be taxable in the hands of the Trustees at a flat rate which at present is 40% (excluding dividend income which is taxed at 32.5%). The Trustees have no personal allowances for Income Tax purposes.

NB. The first £1000.00 will not be subject to this higher rate tax.

Capital Gains Tax:

The Trustees of a Discretionary Trust have an allowance for Capital Gains Tax purposes of currently £5,050.00 per annum.

Any gain above this amount would be taxable at a flat rate which at present is 18%.

INHERITANCE TAX:

If the value of an investment put into a Discretionary Trust set up in a Will exceeds the nil rate band, then Inheritance Tax will be payable on the first death and at ten yearly intervals, although this currently would be at a rate of no more than 6% for the ten yearly interval charges. There will also be a similar charge when the Trust is wound up or monies are paid out of the Trust again, only if the value exceeds the nil rate band.

SPOUSES / CIVIL PARTNERS AND THE NIL RATE BAND EXEMPTION

On 9th October 2007 the Chancellor announced that the nil rate band exemption for spouses and civil partners for Inheritance Tax, if not used up on the first death, could be carried forward to the second death. This means that on the second death currently £650,000.00 will be tax free. (Please see our Inheritance Tax Planning Brochure for further details.)

It should be noted that putting assets into a Discretionary Trust will use up all or part of the nil rate band exemption and so this will not be available to carry forward to the second death. This will mean that spouses or civil partners taking this option will lose out on the benefit of any increase in the nil rate

band between the first and second death. There are ways however to increase the amount of Inheritance Tax exemption available using the loan or charge scheme and these can be discussed with your adviser.

PLEASE NOTE that if the Loan option is followed, then on present rates there should normally be no Income Tax, Capital Gains Tax or Inheritance Tax liabilities to consider.

Stamp Duty Land Tax:

Stamp Duty Land Tax will be payable on the amount of an IOU passing into the Discretionary Trust relating to property, if it exceeds £175,000.00. If Stamp Duty Land Tax does have to be paid, this would be at the rate of 1% on amounts of up to £250,000.00 and 3% on amounts between £250,000.00 and £500,000.00, so that Stamp Duty Land Tax on £325,000.00 would amount to £9,750.00.

There are ways of avoiding Stamp Duty Land Tax, for example, if an equitable charge was taken in respect of the property instead of an IOU, then Stamp Duty Land Tax would not be payable. Please discuss the various options with your Adviser at the time of making your Will.

Special Notes

1. Severing The Joint Tenancy:

If you hold your residence as beneficial joint tenants, then in order for the value of the property to be included in the trust, it will be necessary to sever the joint tenancy in the property. The property will then be held as tenants in common. In other words, you will own the property as to a share normally of one-half each and the respective shares can then pass under the terms of your respective Wills, rather than to the survivor automatically on the first death (as is the case with joint tenants).

2. Transfer Of Property

There are difficulties which may need to be taken into account when considering a nil rate band Discretionary Trust in your Will. If your residence has ever been transferred from one sole name into the joint names of you and your spouse or civil partner, then alternative arrangements will need to be made. There are several possible ways round the problem, although academic opinion is divided on the subject as to the alternatives. These

however will not be relevant if your total estate is below the nil rate band exemption, currently £325,000.00.

Please also inform us if either party in the couple has never worked and potentially not contributed equally to the family home as this may also have implications if Inheritance Tax is an issue.

If you think either of these problems might apply to you, then please alert us to the problem and your advisor will discuss the options with you.

All Tax rates quoted are correct at the time of publication.

Inheritance Tax Planning

With Financial Services

We have close links with a company of independent financial advisers who can recommend products to suit your needs. They can also provide life time asset preservation or immediate long term care plans.

If you would like more information about us then please visit our website on www.sedgwickkelly.co.uk where you can meet us in person and find more details of the services which we offer, together with any current news items.

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