



WRIGLEYS
— SOLICITORS —

Estate Planning

Who we are



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Today we will look at

- Your annual meeting with clients and Will 'health check'
- Wills and LPAs for business owners

Red flags?

When having your annual meetings with clients, what more can be done other than to check a Will is in place. Are there are “red flags” for you to look out for?

Pre-9th October 2007 Will

- At this time the nil rate band was £300,000.
- If on the first death everything went to the survivor then when the survivor died, they only had their nil rate band of £300,000.
- This meant just one exemption of £300,000 per the married couple.
- The solution – it was very common for Wills to be put in place that used the nil rate band on the first death. It might have been gifted into a discretionary trust (NRBDT), with the balance going to the survivor outright or into a life interest trust for their benefit.
- The arrangement was usually very flexible and gave the family and executors the chance to “take stock”. Sometimes the NRBDTs were kept running, sometimes they were unravelled.
- Red flag – have they severed the joint tenancy? Have they moved house since the Will was signed and has anyone checked how the new house is owned?

9th October 2007 – Pre-budget announcement and we learn about the transferable Nil Rate Band

- This applies when the second death is from 9th October 2007 onwards.
- We all know how this works. If, on the first death, that person doesn't use their Nil Rate Band then on the second death you can usually apply for two. Lots of narrative at the time saying if the Nil Rate Band had increased to £400,000 then it wouldn't be £325,000 + £400,000, it would be 2 x £400,000. Now the Nil Rate Band discretionary trust in a Will wasn't as an attractive option.
- If the Will is dated 9th October 2007 onwards (or somewhere close to that date) it could be on first death everything passes to the survivor or into a trust for their benefit.

July 2015 budget and we learn about the Residence Nil Rate Band

- The headline was if the Deceased owned in a residence from 8th July 2015 onwards which they have lived in, died 6 April 2017+ and they gifted it to descendants then there is an additional exemption called the Residence Nil Rate Band (RNRB). It increased in time as follows:
 - 2017/18 - £100,000
 - 2018/19 - £125,000
 - 2019/20 - £150,000
 - 2020/21 - £175,000
- We know it will stay at £175,000 until at least 5th April 2026 – might then increase in line with inflation?
- If, on the first death, the deceased didn't use their RNRB, then it can be transferred. For deaths *before* 6 April 2017, it wasn't possible to use the RNRB (it didn't exist!) so it can always be carried forward, subject to taper relief. Doesn't matter if the first to die didn't even own a residence or they did and gifted it elsewhere.

The devil is in the detail – Taper Relief

- Taper relief that is relevant when reviewing Wills. Beware of ‘bunching’.
- When the estate is £2,000,000 or more, we lose £1 of the RNRB for every £2 over the threshold. For a married couple, when the survivor’s estate is at £2,700,000+ then you have lost it.
- It’s the value of the “estate” is relevant. This is assets less liabilities. Other exemptions are ignored so if assets qualify for Business Relief or Agricultural Relief, those assets still count towards the £2,000,000.
- What’s the potential loss? £140,000 extra tax to pay if married couple and both RNRBs are lost.

If your client has a Will that's dated pre-9th October 2007 that includes a NRBDT and life interest trust of the balance, is it still fit for purpose?

- There could be issues regarding Trustee powers in the life interest trust that scuppers access to the RNRB. What was done “back in the day” might not work now. The older Wills were drafted based on the IHT provisions of their day.
- For example, the Will could say on the first death everything passes to a life interest trust for the benefit of the survivor. When the survivor dies, to pass to their children but the Trustees' powers might not automatically come to an end on the second death. The children might not have a right to the assets, so they are not 'closely inherited' so the RNRB is lost.
- Red Flag – if your client is the survivor of a married couple and a trust was created on the first death the Will/trust ought to be reviewed. What powers do the Trustees have? Are the Trustees able to exercise their powers of appointment after the survivor's lifetime? Is there is risk HMRC will argue when the survivor dies assets are not closely inherited by the children and the RNRB is lost?

Shows the importance of a thorough review.

Examples

- Patrick dies in 2021. His entire estate is worth £1,200,000 and he gifts it all to his wife, Beryl. This includes his half of the family home which is worth £500,000. When Beryl dies in 2022 her entire estate is worth £1,800,000. Her executors can claim the normal and transferable NRBs and the normal and transferable RNRBs which gives a £1,000,000 exemption. We are only paying tax on the £800,000 which gives us a tax bill of £320,000.
- What if Patrick's estate was worth £1,800,000 and the family home has gone up in value, so Beryl's estate is worth £2,700,000 when she dies? Here we have lost the RNRBs entirely. We only have an exemption of £650,000 which means we have £2,050,000 subject to tax which gives us a tax bill of £820,000.

Examples continued

- What if we use the figures in the second example above and Patrick had gifted £325,000 to his children in his Will? Beryl's estate reduces to £2,375,000. She has her NRB and £187,500 of RNRB. Exemption is £512,500 so £1,862,500 at 40% = £745,000. Tax saving of £75,000.
- We could go one step further and Patrick gifts £325,000 to his children and an interest worth £500,000 from his share of the family home into a trust for his children. Here Beryl's estate reduces further to £1,875,000 when she dies. Her executor can claim normal NRB and RNRB so £1,375,000 is taxed at 40% = £550,000. But remember, there'll be £130,000 of tax to pay when Patrick died, so total bill for the married couple is £680,000. Still a tax saving of £140,000 overall.

Examples continued

- What if the couple had kept things simple and Patrick gifts his estate to Beryl?
- Beryl, knowing she is terminally ill, makes a gift £800,000. Although this will probably use the “normal” Nil Rate Bands if she dies within the following seven years, she has pushed the value of her estate below the £2,000,000 threshold ($£2,700,000 - £800,000 = £1,900,000$) her executors can claim 2 x RNRB.
- If she survived the gift for 3 years+ then there could be taper relief available on the tax paid re failed PET.

Downsizing

- Does this mean you advise a client to just stay in the house until they die? The short answer is no.
- Downsizing legislation is a nightmare. Very techy and clients should be advised to get specific advice on the point. It's useful to look at this at the same time as a reviewing their Will.
- Starting point – if the deceased owned a property on or after 8th July 2015 and has lived in it then downsizing legislation means that the full residence Nil Rate Band may be available provided that the closely inherited criteria is met.

What about second marriages – any other “red flags” to think of?

- Joan and George were married in August 2017. They had both been married before and their previous spouses died. They have children from previous marriages.
- They think they want Wills that say on the first death everything passes into a flexible life interest trust for the survivor and on the second death to the children equally.
- As per their wishes, no IHT to pay on the first death - spouse exempt.
- Potentially each will have their own Nil Rate Band and the RNRB from their first spouse as well as their own. So, each one could have a nil rate band of £1,000,000 - £2,000,000 altogether.
- Can only ever claim a maximum of 2 x NRBs.

What about second marriages – any other “red flags” to think of?

Assets:

Family home (JT)	£1,000,000
Joan	£1,200,000
George	£1,200,000
Bunched	£3,400,000

- RNRB lost.
- We can only use 2 x ordinary nil rate bands, so the taxable estate is £2,750,000. Tax bill = £1,100,000 on the second death. What if we'd taken advantage of all the Nil Rate Bands available?

What about second marriages – any other “red flags” to think of?

- Sever the Joint Tenancy.
- George dies and gifts his half family home to a flexible IPDI for his children - £500,000 covered by 2 x RNRB + £150,000 normal NRB.
- George gifts the balance of his normal NRB - ($£650,000 - £150,000 = £500,000$) to a NRBDT.
- George has gifted £1,000,000 without IHT.
- Balance of his estate to an IPDI for Joan.

What about second marriages – any other “red flags” to think of?

When Joan dies her assets:

Family home	£450,000	(applied a 10% discount for co-ownership)
IPDI	£700,000	
Joan	£1,200,000	
Total	£2,350,000	

- We can apply for 2 x ordinary Nil Rate Bands - £650,000
- Can apply for £175,000 of RNRB
- The taxable estate is £2,750,000. Tax bill = £610,000 on Joan's death.
- IHT saving of £450,000

Pause for thought

- Note – additional tax could have been saved if Joan had gifted to reduce her estate below the £2 million taper threshold.
- Negative - complex Wills, the cost of putting those in place and the “faff” factor of having trusts. Registering with TRS.
- Children having an IPDI may be 'unsettling'. CGT on later sale of the family home - 18% or 24%? Could divorce or bankruptcy be a risk? Widow as trustee and IPDI means an element of control. First to die knows his children will benefit.

Suzannah Farnell

Today we will look at

Key Considerations for Clients with Business Interest

- I am a partner in the Wrigleys' family business team
- We are a team which specialises in advising private individuals in respect of their estate planning where there is a business interest involved
- We work with family business owners and also owner managed SMEs
- Every business is different, but I am looking to highlight some of the key considerations when looking at Wills and LPAs for clients who do have an interest in a business

Structuring Wills for Business Interests

- The key is to have a tax efficient structure, which maximises any available Inheritance Tax Reliefs and enables double dip planning where appropriate
- A trust structure is usually preferred as this allows for flexibility and assets protection
- The appropriate trust structure will depend on the client, their assets, their marital status and the beneficiaries of the estate
- Structure is likely to be different if not dealing with a married couple and single person

Business executors and trustees

- Understand the difference between the role of an Executor vs. a Trustee
- Importance of choosing knowledgeable executors and trustees who are trustworthy and familiar with business
- Addressing potential conflicts of interest – are they also a shareholder?
- Assets may change following sale – investment decisions will need to be made

The Importance of the Letter of Wishes

Important considerations for side letter

- Key advisors to consult
- Over-arching intentions for the business and succession plan
- Intentions if business is sold
- Provision for surviving spouse and different family members (fairness does not mean equality)

Aligning Business Documents with Personal Estate Planning

- You cannot prepare Will with reviewing corporate documents
- Partnership Deed, Articles of Association, Shareholders Agreement
- Must ensure alignment with the client's Will and letter of wishes – review is from a personal planning perspective
- If amendments are required will require corporate expertise

Client Example

- We act for two clients. They are a cohabiting unmarried couple who I will name, X and Y, and they have 2 children.
- Together with own 1/3 of a trading business, X owns the majority share of that 1/3 share
- X went into business with two friends and for tax purposes, each of their partners also own shares
- Shareholders agreement created certainty for business but created binding contract for sale on death – BPR lost, and CGT potentially triggered as two of couples not married

Business LPAs

- Separate topic but important to consider at Will review
- Identify type of business – sole trader, partnership, limited company
- Consider effect of client's loss capacity on running of business
- Is current LPA fit for purpose where business is concerned?
- Multiple business – may require multiple LPAs that need to align
- Considerations around choice of business attorneys similar to executors and trustees
- Consider sale proceeds – which document should cover them?

TA v the Public Guardian – Validity of LPAs

- Recent case which has called into question the validity of existing LPAs on basis of being correctly certified by Certificate Provider
- CP was long standing friend of donor – over 50 years
- Satisfied she had capacity but judge rules she had not gone far enough to satisfy herself under requirement of mental capacity act 2005.
- Did little more than witness signature and had not provided an opinion.
- Role of CP is to safeguard and not merely confirm that donor has capacity.
- Not a form filling exercise



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Thank you for listening today



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