

Thinking ahead



An affordable will and estate plan for you and your family



Thinking ahead...

Most people understand the importance of having a will and estate plan to safeguard their family's future. However unless the process is made easy and affordable, more often than not, making a will remains on the 'too difficult' pile.

To address this issue Withers has created 'Thinking ahead' – a sophisticated estate plan that is tailored for you and your family at an affordable price.

Planning for the future is like playing chess. You need a clear strategy and understanding of how one decision can potentially impact on another. So please call us for a no obligation chat on 020 7597 6000 to discuss 'Thinking ahead'.



Life is full of surprises...

And circumstances change, often without warning. To provide for this, and to give you and your family peace of mind, estate planning should be given careful consideration.

If you have assets of over £1m, in addition to any interest in pension funds or life insurance policies, then we can help you with your estate planning. For families such as yours, inheritance tax is potentially a major concern, and not leaving a will can be disastrous.

Estate planning requires an up-to-date, tax-efficient will, that reflects your wishes; consideration of a number of related matters such as making lifetime gifts to your dependants; ensuring your pensions and life insurances are held in the most tax-efficient way; and making provision for the consequences of a possible future loss of mental capacity.

We have produced this guide to outline some of the priority areas that you need to think about, and to introduce the specialist team here at Withers that can help you to deal with them.

As we have been advising families on wealth management and estate administration for decades, we will make the whole process as simple and straightforward as possible at an affordable price.

Facing up to the future...

Why you need an estate plan

With a plan in place, the future does not need to be uncertain. You can provide for any number of concerns by asking the following questions:

- Who will look after my children if both my partner and I die prematurely
- How can I prevent my children inheriting too much too young
- How can I be confident that my partner will be properly cared for when I am gone
- Have I done everything I can to minimise the inheritance tax burden on my family
- What happens if I become too ill to make important decisions
- How can I protect my assets if one of my children divorces
- What if my partner remarries after my death – will my children's inheritance be protected
- How can I look after my parents if they cannot look after themselves

If you die without making a will, UK intestacy rules come into play. These are very unlikely to reflect your wishes, and may easily give rise to a significant and quite unnecessary tax bill – which, in the event of your unexpected death, could fall at the worst possible time.

Everyone's situation is different. The mix of assets you own – your pension policy and life insurance arrangements, UK and overseas properties, business interests and family circumstances – means you require a tailored estate plan that meets your individual needs.

Where there's a will...

To assist you in the process of making the most appropriate estate plan, we have included a simple checklist at the back of this guide. This can form the basis of a will that works in your best interests. It will also assist with the related tax planning, outside the will itself, required to deal with jointly-owned property and pensions or life insurance policies.

The main issues which should generally be considered when preparing a will include:

- Choice of executors/trustees (especially important if your children are still young)
- Appointment of guardians for young children
- Legacies of cash or personal items
- Effective use of the inheritance tax (IHT) tax-free band and residence tax-free band
- Making the most effective use of IHT reliefs, for example for business property
- Effective use of the spouse or civil partner exemption from IHT via outright gifts or gifts into trust
- The tax-efficient use of flexible trusts which allows you to benefit children at the appropriate age and avoid giving them too much at too young an age

Protecting your wealth...

Inheritance tax applies to the worldwide estate of anyone who dies domiciled in the UK. At 40% of any value of an estate over £325,000 plus an additional amount (the residence tax-free band) of up to £175,000 this is, potentially, a substantial liability.

However, assets given to a spouse or civil partner are usually exempt from IHT, and the inheritance tax-free band is transferable between them. The new residence tax-free band is also transferable. Taken together, these features can be used to real advantage, achieving significant tax savings for your family and safeguarding your wealth.



To see how this works in practice, assume a very straightforward situation – a married couple with total assets of £2m including a house owned as tenants in common of, say, £600,000, and one or more children. Both spouses die after 5 April 2020. The husband leaves everything he owns to his wife and dies first. Based on current rules (and provided a proper will is in place leaving the estate to the children on the second death), there is no tax at all on the husband's death, and the widow has the security of owning the family home, and all other assets, outright. Further, their children will be able to claim both tax-free bands of £325,000 each on her death, and both full residence tax-free bands, the full amount of which is available from 5 April 2020. That is to say, IHT will only apply to the portion of the combined estate over £1m.

Had the husband not made a will, the intestacy rules would apply and the result would be very different. If the husband's estate comprised £1.5m of their total assets including half the house (£300,000), then on his death the widow would only receive £875,000 with the remaining 42% (£625,000) being held on trust for the children until they are 18. For IHT purposes, the residence tax-free band will be limited to 42% of the value of the husband's share of the house (ie £126,000) rather than the full amount of £175,000 and the result will be that a tax charge of around £70,000 will arise on the husband's death. HMRC are likely to take this approach even if the whole of the husband's share of the house is passed to the widow in the course of the administration of his estate (so that she has the security of owning the whole house) and other assets are actually allocated to the children's share.

The introduction of the residence tax-free band (and rules which make it available where the house is sold pre-death), whilst in general welcome, does not make it less important to make a will, both for tax reasons and to ensure a surviving spouse or civil partner is provided for most effectively.

Your pension arrangements

For IHT purposes, it is important that any lump sum benefits payable after your death do not form part of the estate. Typically, where a pension is provided by an employer as part of a group scheme, benefits payable after death will be subject to a flexible trust, meaning that they are not exposed to IHT. The scheme member can provide additional guidance to the trustee of the scheme by indicating who should benefit after his/her death.

However, under a personal pension scheme, lump sum benefits may be subject to IHT. If this is the case, it may be prudent to assign the policy to a separate trust, meaning that the death benefits would be held outside the estate. But the new pension freedoms need also to be considered, and the best outcome may be for the funds to remain within the pension structure where, in certain circumstances, they can roll up tax free for the benefit of future generations. Specialist advice on this area is essential.

Lifetime giving...

With careful planning, the tax savings can be much more significant. Gifts made during your lifetime to children can be wholly free of tax; and lifetime gifts of assets to most types of trust are chargeable at half the death rates. There are other reliefs that can reduce the rate of tax payable, most notably relief for interests in a family business or company, for agricultural property, and for gifts out of your surplus income.

Inheritance tax is a complicated and potentially expensive area. But effective use of your gift allowance, placing funds into trusts and transferring assets can all assist to reduce the burden of tax. Expert advice is vital if these strategies are to be timed and executed to maximum effect.

A question of trust

You may be aware that trusts can be used to minimise IHT exposure. By removing assets from the scope of your estate, they can save your family very substantial amounts of tax.

If the size of your estate permits, you may want to consider establishing a trust. The general principle is that gifts into trust give rise to an immediate inheritance tax charge of 20% on any value over, at most, £325,000. However, it is possible to reduce or avoid this charge by using the reliefs that apply to business or agricultural property, or by transferring cash which represents normal expenditure out of income. 'Nil rate band trusts', up to a value of £325,000, may also be created, free of any immediate IHT charge, every seven years. Trusts of this sort are always tailor-made. Expert advice is essential.



Facing the future with confidence...

Your estate plan should also deal with the impact for you and your family of any decline in your mental or physical condition in the years to come.

Lasting Powers of Attorney (LPAs), which replaced Enduring Powers of Attorney in 2007, have been developed to help you and your family manage the consequences of such an event. Under an LPA, you can appoint someone (your attorney) to take decisions on your behalf, in the event that you are no longer able to do so.

There are two types of LPA: the Property and Financial Affairs LPA which covers decisions affecting your property and finances, and the Health and Welfare LPA, which covers medical and other decisions affecting your general welfare. By putting LPAs in place, you can be assured that your assets, medical treatment, living arrangements and day-to-day existence will be administered by someone of your choice acting in your best interests, should you lose mental capacity to do so yourself.

Without a Property and Financial Affairs LPA, your assets would be frozen until someone (probably a family member) had made an application to the Court of Protection to act as your deputy. That process is expensive and time-consuming and may involve continuous court oversight of the deputy's actions.

Without a Health and Welfare LPA, you would have no control over who makes decisions for you as to medical treatment or your general welfare.

Alternatives do exist to the Health and Welfare LPA. Living Wills (also known as Advance Decisions or Advance Directives) enable you to specify what medical treatment you would and would not be prepared to accept should you, at some point, be unable to give or refuse your consent. Their scope is therefore much more limited than a Health and Welfare LPA and, in some circumstances, they may not be effective if they do not cover the particular situation.

This is an emotive area, but our team at Withers can help you to identify suitable attorneys, as well as defining limits to their powers and building in additional safeguards, where appropriate.

Looking ahead...

Wills, IHT, LPAs – these are all stark reminders of mortality. No-one enjoys thinking about them. But not thinking about them is worse.

Our specialist estate planning team have helped thousands of clients with these issues. We can advise you on which plan is likely to work best for you, and can put it in place quickly, securely and cost effectively.

Particularly now, when economic and political uncertainty are combining to make the future a very uncertain place, we think a no-obligation consultation with us may assist you. If you would like to do so, please take a few minutes to complete the enclosed Will Questionnaire and send it to us. We will then contact you to take matters forward. Information about our fees is provided separately (please see insert).



