WILLS AND THE FAMILY HOME

In recent years, it has been relatively common practice for spouses or civil partners to make Wills leaving half of their jointly-owned home to third parties – e.g. their children – following the first death.

The main reasons for doing so were a) to use up some of the Inheritance Tax-free allowance (the so-called "Nil Rate Band") of the first to die, in order to reduce the Inheritance Tax bill following the survivor's death, and b) to protect at least half of the property's value from the clutches of nursing fees in the event that the survivor later required such care. If, on the other hand, the deceased's half-share of the house were to pass instead to the survivor outright, the value of the whole house would be taken into account by the local authority when assessing the survivor's ability to pay.

There are, however, a couple of risks – possibly remote, but still worth pointing out – associated with transferring half of the house to third parties:

1. each of those third parties would be legally entitled to exercise his or her right as a co-owner to force the sale of the house in order to realise his or her respective share of the proceeds; and

2. when the time eventually came for the house to be sold, the increase in value of each third party's share –between the date of the first death and the date of sale – could be higher than his or her annual exemption for Capital Gains Tax purposes, in which case that person may face an unwelcome tax bill.

From an Inheritance Tax point of view, one major change since 2007 is that there is no longer the same need to use up the Nil Rate Band following the death of the first spouse or civil partner. Indeed, depending on the circumstances, doing so may actually lead to an increased Inheritance Tax bill on the second death. This is because the percentage of the Nil Rate Band that is not used up on the first death may now be "transferred" to increase the Nil Rate Band available on the second death.

Although one positive result of this is that Wills leaving everything to the surviving spouse or civil partner are now extremely efficient for Inheritance Tax purposes, many people remain concerned that the estate passing outright to the survivor could end up being whittled away to meet the costs of nursing care. As the family home is usually their most valuable asset, they want to know how best to protect it for the next generation.

Leaving your half-share of the property "in liferent" for your surviving spouse or civil partner – rather than outright to them or anyone else – offers the following benefits:

1. despite owning only half of the property, the survivor would be entitled to occupy the whole for the rest of his or her life, thus avoiding the risk of being evicted by a co-owner who needs money and so wishes to force a sale;

2. unless the legislation changes, there should be no Capital Gains Tax bill if, say, the property were sold and a more suitable property purchased during the survivor's lifetime;

3. half of the property's value should escape exposure to nursing home fees; and

4. by taking advantage of the "Transferable Nil Rate Band", the potential Inheritance Tax liability following the second death could be significantly reduced, if not avoided altogether.

If you'd like to discuss setting up a Will, please contact a member of our Private Client team at one of the following offices:

Edinburgh - 0131 225 1677

Perth - 01738 231 000

This note is for general information only. Advice can only be given after a detailed consideration of the particular circumstances. Accordingly, you should not take any decision or action in reliance on this note.

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