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How often should I review my will?

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Our general advice is that Wills should be reviewed at least once every 5 years, however this is a generalisation and in practice the regularity of review depends very much upon your individual circumstances. The aim of this article is to try and give some guidelines, both general, and specific to the last few years, as to when you should be looking at your wills.

Turning first to what might be described as "Current hot topics". Generally speaking what we are thinking about here are changes in the law that might impact on your Will. Our Prime Minister before his elevation to No 10 made great virtue out of closing Tax loopholes. In the main these relate to Inheritance tax and therefore are only relevant to those who are worried about that tax.

However it is not just changes in tax law that may result in a need to change your will, sometimes a change in the general law may trigger a review, in recent years the best example of this has been the arrival of Civil Partnership legitimising same sex relationships in earlier generations we had things like the right of illegitimate children to inherit. So let us look at some of those Current Hot Topics that might affect your Will.

1. Civil Partnership. Is one of your offspring engaged in a same sex relationship and if so is Civil Partnership an issue? If so should you take account of it in your Will? Correspondingly if you are in a same sex relationship you can think about some of the Inheritance tax planning that previously only applied to married people.

2. Stamp Duty. What I hear you ask has Stamp Duty (or more correctly as it is now called Stamp Duty Land Tax) to do with Wills? Reforms in 2005 have impacted upon various forms of loans, when these reforms were introduced it became apparent that the Loan that is central to the operation of most Nil Rate Band Discretionary Will Trusts might become subject to this tax.

   At first it looked as if the way to avoid this was a wholesale revision of Trustees powers contained in such wills. It now turns out that most Wills already contained sufficient powers but it remains that we are keen to review most Nil Rate Band Discretionary Trust

Wills prepared before about 2000 as the powers they contain are very limited compared to current standards.

3. Flexible Life Interests. This was a very useful route whereby the better off could sometimes obtain three nil rate band exemptions rather than the two exemptions that could be obtained using the Nil Rate Band Discretionary Trust while still ensuring that the surviving spouse was the primary beneficiary. Sadly but not unexpectedly the 2006 budget put the lid on this.

   These trusts still remain useful but they now are significantly less useful except to the very wealthy where the surviving spouse can survive comfortably without access to the Trust Funds. Fortunately this means that most people with these Wills do not need to review them but need to understand that they may not achieve what was originally intended.

4. Trusts for Young People. Most of us feel that the average 18 year old does not have the maturity to handle large sums of money and therefore defer benefits until an older age typically 21 or 25. Gordon Brown, possibly because of the youth of his own children, does not seem to agree with this!

   In the 2006 budget he introduced an extra charge to IHT on trusts that were designed to prevent children inheriting until an age older age than 18. This completely overturned a policy introduced in 1975 by Labour Chancellor Denis Healey and means that many wills prepared prior to 2006 which included such trusts might suddenly become liable to an extra charge to tax.

   This is only affecting larger estates with trusts for children over the age of 18 and accordingly it is not a cause for mass panic, but nevertheless where a Will includes such trusts revised trusts can be incorporated which avoid or minimise the risk of such tax. We are already incorporating these revised trusts in all new Wills.

Having looked at the current legal issues it is time to look at the more routine reasons for reviewing a Will. The following is a list of events, which as a general rule **DO NOT** require you to change a Will:

1. Your address changes

2. A beneficiary changes his/her name, so long as he or she can still be identified this is not an issue.

3. A beneficiary changes his/her address, just the same as above.

4. A person entitled to a relatively small legacy dies; generally speaking a legacy dies with the individual so that unless the legacy is a gift of something very significant it does not matter.

5. An item that has been bequeathed is sold or given to the beneficiary while you are still alive. Where an item is disposed of during your lifetime the gift lapses and no further action is usually required, however it may be wise to ensure that a note of the gift or loss of the item is recorded so that time is not wasted trying to find the item or explain it’s absence to the Revenue.

Now to the items which **DO REQUIRE** a change or review as a matter of urgency:

1. Marriage (and nowadays Civil Partnership). Unless you have a will expressed to be in contemplation of the marriage/civil partnership then your will is automatically revoked by the act of marriage/civil partnership.

2. Death of a principal beneficiary. While most well drafted wills do include provisions to cover the death of one of the principal beneficiaries it is wise to consider whether or not the alternative arrangements in the will are appropriate. For example you may have a will in favour of a child with provision that if that child dies his/her share goes to his/her children (your grandchildren). If your child then dies prematurely it may be

that you will want to think about his/her spouse in the place of your grandchildren or jointly with the grandchildren.

3. Change of your circumstances. If your will has been prepared on the assumption that your estate will comprise X assets and for various reasons some of the principal assets are no longer available, for example you have been in a nursing home, your house has been sold and the value of your estate greatly reduced, it may no longer be appropriate to have a long list of large cash legacies. Contrast this with no 4 above. The reversed can also apply, you win the lottery or inherit a fortune, not only might this be an opportunity to revise your will it might also be a chance to look at your Inheritance tax planning.

4. Change of a beneficiaries circumstances. Typically this relates to a beneficiary who gets into some form of financial mess, usually as a result of divorce, less frequently as a result of some sort of financial indiscretion. Occasionally this may be a result of a beneficiary ceasing to be able to manage his affairs as a result of senility or possibly an accident. Whatever the cause these are the sorts of cases where Trust may be needed in the place of outright gifts.

Inevitably an article like this cannot cover every possible scenario but we hope that the guidance will help you to decide whether or not a review is required. As a general rule a short letter or meeting will enable us to assess the position, if no revision is required we rarely make a charge for such review. If you feel that you ought to look again at your Will please contact a member of our Private clients team.

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