Notes to help you complete our Wills Questionnaire

These notes provide a commentary on the accompanying questionnaire. They should explain the options open to you and the consequences of your choices. Some of the explanations will not be relevant to your personal situation but you may find them of interest and they may highlight those circumstances in which you should revise your new Will in the future.

Although a Will can achieve some limited tax planning and assist your relatives in dealing with your estate, you should also consider lifetime planning. Making a Will may provide a good opportunity to consider tax planning during your lifetime, for instance, in taking out insurance policies, changing the ownership of property between you and your spouse etc. It may also be the time to consider granting a Lasting Power of Attorney to some person who you can trust to deal with your property and affairs and make decisions about your personal health and welfare when you no longer can. A Lasting Power of Attorney, unlike an ordinary one, does not fail once the person giving the Power becomes mentally incapable. It avoids the necessity of applying to the Court of Protection to deal with an incapable person's affairs, which is very expensive and cumbersome process. If you would like to have some more information on this subject, please do ask us if we haven't already raised it with you.

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Personal details

Any variations in your name need only be advised if you hold any assets or bank and building society accounts in that different name.

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Assets

If you own property jointly, the way in which you hold it is very important when you die. Most jointly owned property is held as Joint Tenants the other way to hold property is as Tenants in Common. The distinction between property held as Joint Tenants or Tenants in Common is crucial in the context of drafting a Will. Both Joint Tenants own all of the property. Such property will pass automatically to the survivor outside the terms of the deceased Joint Owner's Will (even though it may still be taxed as part of his Estate). Tenants in Common own the property in defined shares (usually equally if this is not specified in any documentation). That share must be bequeathed in a Will either specifically or it will be part of the residuary estate. When deciding which choice to make, the share of the value that you own in any jointly owned property should be included in your calculation.

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Funeral wishes

You may have specific wishes regarding funeral arrangements and disposal of your body. You do not have to complete this section and if you do not, we will not make any reference to these matters in your Will. However, your Will is where most people check to see what you wish to have done following your death, so if you do have any particular wishes it is a good idea to set them out in your Will. Another option is for you to write out your funeral wishes and leave them in a sealed envelope that we will store with your Will for future reference. This means that you can

change those instructions in future without having to change the Will. In case your Will is not found before your funeral arrangements are made we also advise that you should make those closest to you aware of your wishes, as you may perhaps give them more details than you would want to have set out in your Will.

Executors

Executors are the persons appointed to look after a deceased's estate. An executor appointed by the Will does not have to accept the office and can either renounce the Executorship or can decide not to act initially but reserve his/her right to do so later during the period of Administration. The role of your Executors is to establish what is comprised in your estate, pay any debts or taxes due and then ensure that the provisions of your Will are carried out. Once this has been done the period of Administration is completed. It may be that your circumstances are such that on your death a Trust has to be set up or a Trust is imposed by Law, for instance where children who are under the age of 18 inherit some or all of your Estate. If your Will provides for ongoing Trusts then your Executors automatically become the Trustees of the ongoing Trusts unless you specify otherwise. Trustees do not have to be the same as Executors but in general your Trustees should be chosen for the same reasons as your Executors, for example, because they are trustworthy and have some experience in financial matters. Once your Executors have completed the Administration they can resign and appoint their own successors. However, during the period of Administration they cannot resign and they cannot themselves appoint substitute Executors. During the period of Administration the Trustees will own your assets but can only use them for the benefit of the Beneficiaries of your Will. They have a long-term commitment to look after any Trust assets and to protect and balance your Beneficiaries' interest.

If your Will is to be a simple one, for instance giving the bulk of your estate to an adult, then that person, e.g. your Spouse or Partner, can be appointed as a sole Executor. However, you should consider that your Spouse or Partner may die before you and you may want to appoint a substitute executor for that situation. If Trusts arise then it may be better to have at least two people from the start. You can have an alternative appointment, e.g. appoint your Spouse if he or she survives you but if not, your adult children or two other individuals could be appointed. You should ask them first. You can appoint this Firm as your Executors. We will not make any charge for merely being appointed and the cost to your Estate will be no greater than if your Executors instructed us to act for them in administering your Estate. In fact it may be cheaper as we will not write letters to ourselves about what needs to be done and will not need to have meetings to explain the documents that need to be signed. If you do not have two people whom you wish to appoint as Executors or you wish to reduce or spare your relatives the responsibility for administering your Estate then you should consider appointing this firm to act as your Executors.

Guardians

If a child's parents are not married when a child is born, only their mother may appoint a Guardian unless their father has acquired "parental responsibility" by formal agreement or Court Order.

If you have children under the age of 18 you may appoint one or two Guardians to look after them following your death, where their other parent has died before you. This applies even if parents are divorced. The non-resident parent is likely to have prior rights to be responsible for a child over

a Guardian appointed by the resident parent but it may be worth appointing someone who is not your former spouse, if that is what you want, in case your former spouse dies before you. If you make such an Appointment you give your Guardian a stronger case before a Court if an application for Guardianship is to be made. Guardians have the right to appoint substitute Guardians by their Will.

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Gifts

Specific gifts will normally be free of Inheritance Tax which, if payable, will come out of your residuary estate unless you specify that any gift should bear its own tax. The cost of storage, transport, insurance, etc (if applicable) will, however, be borne by the recipient of the gift. If property is subject to a loan, you can also specify who discharges the loan. It is possible to give belongings and even money to an individual with a request that they should be distributed according to a letter or a list. Please note that if items are described explicitly, the gift will only operate if you still own that particular item at the time of your death. If not, the gift will fail completely.

If you wish to make a gift to a Charity we advise that you leave a set sum of money or a particular item. It may complicate the administration of your Estate if you leave a charity a share or a percentage of your property. However, recently the government has made an allowance for an estate to receive a reduction in Inheritance Tax if they make a gift of at least 10% of the value of the estate to charity. It is best if we discuss this point if you wish to take it further.

Your residuary estate

This is where you can choose to whom everything else you own is to be left after any particular gifts that you wish to make have been made. If there is insufficient room on the questionnaire, please attach a separate sheet setting out your wishes. If you think that all the initial beneficiaries in could die before you or at the same time as you, you can also indicate who should inherit your Estate if that happens.

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Special circumstances

The purpose of these questions is to find out whether there are any special circumstances that might require additional clauses in your Will or require me to give you further advice. If you are not sure how to answer any of the questions, please get in touch with us.

Inheritance Tax

Individuals

The first £325,000.00 (from 6th April 2009) of property passing on death is at present exempt from Inheritance Tax. After the 6th April 2017, if you leave your main residence to your children then you will qualify for the main residence nil rate band of £100,000. On each of the three subsequent anniversaries this band will increase by £25,000 so that on the 6th April 2020 the

amount will be £175,000. This gives any person a potential total tax free allowance of £500,000.

Couples who are married or in a civil partnership

Married couples usually wish their estate to pass to their surviving spouse unless both are individually wealthy. Please note:

Property, which passes between spouses, is exempt whatever its value. This means that no tax is be payable on the first death if all your property goes to your Spouse. Any unused allowance of the first of a couple to die can be used by the survivor on their death. So potentially anything over £650,000.00 at present, or increasing to £1,000,000 by the 6th April 2020, will be taxed (40% is the current rate) on the second death, if the first to die leaves everything to their spouse or civil partner.

There are two main ways on giving property to someone: -

- An absolute gift to the recipient who can do whatever he or she likes with it, or
- A gift for life where the recipient receives the income from or use of the gift but not the capital which passes on the recipient's death to someone else chosen by the person making the Will. The second option may be combined with other options such as discretionary trusts and the power to receive some capital, which may have tax advantages that can be explored further if you wish.

Those with children

Gifts to children can be gifts of the residuary estate, which usually happens on the death of the last surviving parent, but gifts can be made on the death of the first parent. Children cannot give a receipt for property until the age of 18 and until that age, Trustees must administer the property on their behalf even though they may use the income and even the capital for the child. It is usually better for small sums to be handed over to the child's parent to look after on their behalf rather than creating a trust. Often a gift to a child is conditional upon him or her reaching a particular age, normally 18. A later age can be specified but this will have Tax consequences. From April 2006 Property held in trust for someone over the age of 18 is subject to pay a reduced rate of Inheritance Tax when it is paid out to them. It boils down to a choice of passing all of the assets to a very young adult who might not look after them wisely or having the assets held until they are more mature but suffering a small percentage of inheritance tax on that payment. If this is a possibility, then it is best that we discuss it in detail before making any decisions.

If a child dies before reaching that age, you may want that child's children or spouse to take in substitution. (For technical reasons, substitutional gifts to grandchildren have a similar effect if they are to receive the assets over the age of 18). You may also wish to make smaller direct gifts to your grandchildren.