MACFARLANES

AN INTRODUCTION TO THE LAYOUT OF AN ENGLISH WILL

A will is one of the most important legal documents you will ever sign, so it is very important to make sure that you have considered everything you want to put into it. This note highlights some of the most important points which you need to tell us about when we are preparing your English law will: things can get more complex, in particular if there is property outside the UK, so a survey of what you own (your "estate") is always a sensible first step.

EXECUTORS

Your executors are the people who will own and control your assets after your death. They will be responsible for paying debts and taxes and dealing with the estate as you have set out. Should there be any continuing trusts after the administration of the estate is complete, they will carry on as trustees - see below.

Anyone who is over 18 and mentally competent can be an executor - it does not matter whether they will benefit from the will or not. Often the major beneficiary of the will (such as a spouse or partner) is appointed as an executor. It is a good idea to appoint more than one executor, to reduce the risk that your executors will die before you. You should not appoint more than four executors, but you can provide for substitutes: so you might appoint your partner and one of your parents, but appoint one of your children in their place if one of them dies before you.

If it would help, we can provide a professional executor - one of the partners in Macfarlanes, or our in-house executor and trustee company, Embleton Trust Corporation Limited could act, perhaps alone, but preferably as a co-executor and often as a fallback or substitute.

BURIAL WISHES

If you have strong preferences as to whether you are buried or cremated, or where you would like to be buried or have your ashes scattered, you can state these in your will. They should then be obvious at the time of your death so that the funeral arrangements can be made appropriately. Alternatively, you can write down your wishes in a separate letter which is kept with your will. Sometimes this letter includes more detailed preferences for commemoration and religious services.

GUARDIANS

You can nominate guardians for any of your children who are under 18 when you die. This usually only takes effect after the death of their other parent. Obviously, it is a good idea to discuss this with the other parent and appoint the same guardians if possible.

If you do not want to appoint guardians in your will or cannot decide, you can appoint them later on by a separate document: if you cannot decide, do not let this hold up the bigger decisions.

PERSONAL ITEMS

You can stipulate who receives specific items - like jewellery, furniture or pictures. You can either do this item by item in the will, or leave all your personal items to, say, your partner or your executors and ask them in a separate, less formal letter of wishes to distribute them in a certain way. Some people like to use a letter of wishes because it is more personal and can be changed more easily than the will. If it is drafted properly, it doesn't become a public document when you die - unlike your will which will be available at the Probate Registry for anyone to see. Your partner or executors do not have to follow what you say in your letter of wishes, but in practice they would usually do so (and obviously, you would choose executors who were likely to take account of your wishes).

CASH GIFTS

If you want to leave gifts of money to friends or family, or to charity, you can specify these in your will. Alternatively, you could use the "nil rate band" fund described below in conjunction with your more informal letter of wishes.

GIFTS OF LAND

A gift of a house or other land can be made in your will. If there is a mortgage on the land, think about whether you would like the mortgage to be paid off from the other funds in your estate before the land is transferred to the beneficiary, or whether they should take the land with the mortgage debt still attached.

If your house is owned jointly by you and someone else, you need to let us know so that we can advise you on what will happen on your death. It may be that, unless you take an additional step during your lifetime, you will not be able to direct how your share of the house passes by your will and it will pass automatically to the other co-owner. We can advise you further on this.

A TRUST OF THE NIL RATE BAND GIFT

Following changes in 2007, if you are married or in a registered civil partnership with a same-sex partner the proportion of your nil rate band unused at your death will transfer to your spouse or civil partner, if an election is made, and will supplement their nil rate band on their death (know as the "transferable nil rate band"). It may, however, still be advisable to include in your will a trust of the "nil rate band" gift to reduce the total inheritance tax for your family. Everyone can give away a certain amount in their will free of inheritance tax: the figure for tax years 2010/2011 to 2017/2018 is £325,000.. This may be reduced by substantial gifts made within seven years of death.

A trust of the nil rate band sets aside the above sum on simple discretionary trusts. The trustees, who at first would be your executors, but could later be changed, hold the money for the benefit of any one or more of a list of beneficiaries: that could include your spouse or civil partner, your children and other family members, and anyone else you would like to name. The trustees decide who benefits and how much they receive from the trust.

Usually this trust is brought to a fairly swift conclusion on the basis of your letter of wishes which will identify how you wish the sum to be distributed. This might say, for instance, that you would like the trustees to ensure that your spouse or civil partner is financially comfortable and, subject to that, to divide the money equally between your children. But it could alternatively be kept running, for instance, to fund school fees.

THE REST OF YOUR ESTATE

When the executors have distributed all the personal items and cash gifts specified in your will, and paid your funeral expenses and the inheritance tax due on your estate, what is left is known as the "residue" of your estate. It is usually the largest part of what you leave on your death.

Who benefits from the residue of your estate is of course a very personal issue and your solicitor will be happy to talk this through with you. There are many options available: the residue of your estate can be meticulously divided up exactly as you want: so you could for example leave it equally between your children, or arrange for different branches of the family to receive varying shares. Often a share is set aside for one or more charities. Tax considerations may determine that you should follow one route rather than another, e.g. to use the spousal tax exemption.

A trust arrangement can, for example, be used to delay the time when children inherit outright until they reach a specified age, such as 21 or 25. The trustees hold the money for them in the meantime, and can still pay them the income and make available larger sums needed for their housing, education and so on. Using a trust can also give you more options when you want to benefit more than one person. So if you are married and have children (perhaps from a different relationship), you can give your spouse the right to receive the income of the residue of your estate during his or her lifetime, but state that when he or she dies, the money will go to your children. That means that your spouse will be maintained (and the trustees would usually be able to give him or her capital if required) but cannot control the way the capital is ultimately inherited, so that it will definitely be passed on to your children.

Following changes announced in the 2006 Budget on 22 March 2006, you should be aware that delaying outright gifts beyond 18 can have adverse tax consequences.

Think about what could happen in the future. If one of the beneficiaries you have specified were to die before you, would you like their share to go to someone else (such as their children), or just to be shared among the other surviving beneficiaries in proportion? What should happen to the rest of your estate in a "disaster" or "holocaust" scenario in which none of your immediate family were around to inherit it? Many clients like to provide for a "second range" of beneficiaries and then a "long-stop" or failsafe - probably one or more favourite charities.

GETTING ROUND TO IT

It may seem like there are a lot of decisions to make, but when you have taken a look at the points above, we can talk through all the options with you in a face-to-face meeting. Most clients find this very helpful, as we are then able to advise you fully on the scheme of your will and inheritance tax planning in the context of all your family circumstances and your assets, including interests in trusts. As an aide-mémoire, set out below is a list of the likely will clauses in the order in which they commonly appear.

On a final note, signature formalities are, for historic reasons, a little bizarre. We strongly recommend following to the letter your solicitor's guidance when you are sent the final copy for signature.

List of will clauses, some optional, some essential

- Introduction, full name/address, "last will" declaration
- Revocation of old wills
- Appointing executors
- Burial/cremation wishes
- Guardians for children
- Gifts of personal items
- Cash gifts
- Gifts of land/houses/flats
- "Nil rate band" gift outright/into trust
- Who gets residue/how/when
- Any extra trust clauses, e.g. a power of appointment
- Calculating residue
- Technical/administrative clauses, including fee-charging
- Signature/date clauses
- Space to sign
- Space for two witnesses to sign

CONTACT DETAILS
If you would like further information or specific advice please contact:

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