



## Wills Still a Potential Minefield for Many

According to a recent poll, more than one in eight wills is 'self-written' and one in 10 of those people who have made a will fails to tell anyone where it is. Since nearly four out of every 10 adults have not made a will in the first place, the survey shows that approximately half of all families are likely to face the difficulties that more often than not accompany cases where there is no will or the will has a defect because it was made without the benefit of professional advice.

Making a will makes good sense for everyone. Having a will professionally drafted not only provides an assurance that it will not fail because of some simple defect, but it also means that your estate can be administered more quickly, and normally at less cost, than would otherwise be the case. Many people think that if they do not have sufficient assets to be caught by Inheritance Tax, it is not worth making a will. This assumption can cause those left behind unnecessary stress at a very difficult time and the intestacy laws could operate to distribute your estate in a way that conflicts with your wishes. Making these known in a simple will can avoid all such problems.



**We can give you and your family the peace of mind that comes from knowing that your will is properly drafted, legally valid and held securely. Having your will professionally prepared is not expensive and will ensure that your affairs are settled without any unnecessary stress, delay or the considerably greater financial outlay that all too often results if professional advice is not taken. Contact us for expert advice on making a will or any other estate matter.**

## Taxing Times for Trusts



Trustees of discretionary trusts who have found that recent tax changes have resulted in an unacceptably high level of taxation (especially as regards trust income from dividends) should give consideration to the possibility of amending the trust to give a beneficiary the right to receive income from it, by the creation of a revocable income settlement.

A simple amendment to the trust wording may make the trust structure more tax efficient whilst preserving the flexibility that is desired.

**Contact us if you would like more information on how to make and use trust arrangements to protect family wealth.**

**O**f all Inheritance Tax (IHT) legislation, little has been so poorly understood as the transfer of the 'nil-rate band' from one spouse or civil partner to another.

The legislation operates to transfer any proportion of the IHT nil-rate band unused on the first death for use on the death of that person's spouse or civil partner. This is termed the 'transferable nil-rate band' (TNRB).

One of the problems stems from those cases in which the estate of the first deceased has merely passed across to their spouse or civil partner and the formal documentation relating to the estate was either not prepared or not retained. This has been a relatively common occurrence, especially where the estate of the first deceased was small and the will is an 'all to other' type, wherein the whole estate passes to the survivor: such transfers are normally exempt from IHT.

HM Revenue and Customs have attempted to make things simpler by issuing a new code of practice which allows an

estate making use of the TNRB to be an 'excepted estate' provided certain conditions are met.

In practice, this will simplify the administration of a large number of estates. However, there are still conditions which may cause difficulties for many people, such as the conditions that the first deceased:

- must have been domiciled in the UK for IHT purposes at the date of death; and
- must not have had any foreign assets (i.e. a holiday home) worth more than £100,000 at the date of death.

With more than 400,000 Britons owning holiday properties abroad, complexities in dealing with IHT and estates may be more common than thought.

**For advice on any estate planning or wills and trust matter, contact us.**

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## Supreme Court Rejects House Disguised as a Barn

**T**he man who disguised his house as a barn and then claimed that the local council was 'out of time' to take action with regard to the breach of the planning permission has lost his case in the Supreme Court.

Having obtained planning permission to build a barn, the man built what looked like a barn from the outside, but it was actually a three-bedroomed house.

He and his wife lived there for four years, during which time the local

authority was unaware of the breach of the planning permission. The couple then applied for a certificate of lawful use on the ground that the council had not taken any action with regard to the breach within the four-year period laid down by statute for doing so. Obtaining a certificate would legitimise use of the property as a dwelling.

The key element of the Supreme Court's judgment was that despite the apparently clear wording of the relevant legislation, the dishonesty

exhibited by the couple was so far beyond the contemplation of the framers of the legislation that the council was given permission not only to prevent the continued occupation of the property as a dwelling but also to require its demolition.

The Supreme Court has indicated, in the clearest possible terms, that people who attempt to obtain a certificate of lawful use through deceitful actions will not succeed.

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## Misplaced Fence Leads to £20,000 Bill

**A** fence put up by a Devon couple will cost them more than £20,000 in legal fees and re-erection costs after the court decided that it was built a few inches the wrong side of their boundary with their next-door neighbours.

The court case was necessary because the neighbours objected to the fence, which was erected whilst they were on holiday, and claimed that it had been built on their land. They considered the fence to be unsightly and complained that it blocked the view from their drive.

Photographic evidence of the position of an earlier wall was important in determining the line of the boundary, after an expert had given evidence that the boundary line could not be determined exactly.

The judge ordered the fence to be removed and issued an injunction prohibiting the couple from erecting further fencing on their neighbour's land.

It is often impossible to determine the exact line of a boundary and plans filed when properties change hands are more indicative than precise, so disputes are not infrequent. The outcome in such cases can be both expensive and unpredictable.



**If you have issues with a neighbour encroaching on your land, we can advise you of the appropriate steps to take.**

## Inherited Wealth Not Split on Divorce

A recent divorce case has confirmed the general position that when wealth is inherited, it is not normally subject to the 'equal shares' rule that applies to assets built up during a marriage.

The case involved a couple who married in the UK in 1991 after an earlier marriage ceremony in Israel in 1987. The wife had inherited shares worth £700,000 at the time of their UK marriage. By the time the marriage had broken up and the financial settlement was being negotiated, the shares were worth £57 million. Although neither of the couple had worked, on account of the income available to them from the wife's shares, they lived modestly.

The husband's assets were approximately £300,000, which consisted mainly of the family home, which was transferred to his sole name. He wished to sell that house and to purchase instead a property in Regent's Park, valued at an estimated £2 million. He also proposed to buy a second home in Israel for £450,000 and a new car costing £60,000, and claimed that he would require maintenance of more than £100,000 per year to fund his lifestyle – an amount which greatly exceeded the couple's annual outgoings when they were together.



The wife made an offer of £5 million to her husband, but he sought an additional sum to enable him to accomplish his aims. The Court of Appeal rejected his claim, however, holding that the initial offer was based on a generous assessment of his needs.

In general, on the dissolution of a marriage, any assets brought into the marriage will not be subject to the 'equal division' principle that normally applies to assets created during the marriage. The achievement of a different division must normally be founded on compelling reasoning.

## Child Support and Insolvency

When a person goes bankrupt, what is the position regarding a debt they owe to the Child Support Agency (CSA) with regard to arrears of maintenance payments? This question arose recently when a man applied for a creditors' voluntary arrangement (CVA). At the time the application was made, he owed the CSA more than £25,000 in respect of child support payments due to be paid for the benefit of his children.

The CSA ignored the notice inviting it to attend the hearing relating to the CVA as it did not consider it was a creditor that could be bound by the decision under insolvency law. The case reached the Court of Appeal, which agreed with the CSA.

Where a person is in financial difficulties and owes money to the CSA, the CSA retains the right to pursue the sums

owed to it whether or not the person seeks a formal or informal arrangement with other creditors.

**If you are having difficulty with payment of child support, we can advise you on your best course of action.**

## Charity Trustees – Watch Out for Scams

Charity trustees have been reminded of the need to be aware of the possibility that their charity may be used for financial crime. The National Fraud Authority has estimated that annual losses due to financial crime involving charities amount to more than 2 per cent of total income.

As the Charity Commission points out, 'trustees have a legal duty and responsibility under charity law to protect the funds and other property of their charity so that it can be applied for its intended beneficiaries. They must also comply with the general law (and overseas law where applicable) including in relation to the prevention of fraud, money laundering and terrorist financing'.

The Charity Commission has therefore prepared a list of 'ten top tips' for charity trustees to ensure they are aware of the possibility of financial crime and take appropriate steps to reduce the risk of becoming a victim of fraud. Charity trustees are advised to read and carefully consider the implications of the guidance for their charity.

This and other essential guidance for trustees can be found on the Charity Commission website at <http://www.charitycommission.gov.uk>.

**If you have concerns about how a charity at which you hold a position of responsibility is being run, contact us for advice.**

## Daughter Wins Right to Share of £480,000 Inheritance

**A** woman whose mother left her entire estate to charity has won her appeal for a payment from the estate, sufficient to meet her need for reasonable maintenance.

Melita Jackson died in July 2004 at the age of 70. She left a net estate of some £480,000, most of which was bequeathed to the Blue Cross Animal Welfare Society, the Royal Society for the Protection of Birds and the Royal Society for the Prevention of Cruelty to Animals. There was no evidence that the deceased had any connection with the charities or that she had any particular love of animals.

The deceased's will made no provision for her only child, a daughter now aged 50, who was estranged from her mother at the time of her death. The daughter, Heather Ilott, is married with five children and lives on a low income and benefits. Mrs Jackson was a widow whose husband, Mrs Ilott's father, died in an industrial accident in 1960 when Mrs Jackson was pregnant with her daughter. Mrs Jackson formed a lasting relationship with another man, with whom she lived until his death in 1996.

When Mrs Ilott was 17, she met a man of whom her mother disapproved. She left the home she shared with her mother and stepfather to live with her boyfriend and his family and subsequently married him. Despite various attempts at a reconciliation, Mrs Jackson never forgave her daughter for her decision to leave home and so made no provision for her in her will.

When Mrs Ilott made an application under the Inheritance (Provision for Family and Dependants) Act 1975, she was awarded a £50,000 payment from her mother's estate by a district judge. The Act allows a spouse, child or dependant (among others) to claim against a deceased person's estate if their need for 'reasonable financial provision' has not been met.

Considering the £50,000 award insufficient for her needs, Mrs Ilott appealed to the High Court, which not only dismissed her appeal but also upheld a cross-appeal by the charities named in Mrs Jackson's will that the original award of £50,000 should be set aside, leaving Mrs Ilott with nothing. She appealed again.

The Court of Appeal held that the High Court was wrong to reverse the original award and that the discretion of the district judge to make the award had been properly exercised. The Court directed that Mrs Ilott's appeal against the amount of the award be reheard by a different judge, but urged the parties to come to a settlement in order to avoid the expense of a further trial.

**If your will fails to make adequate provision for a dependant, it may be subject to legal challenge. To ensure your estate is distributed as you wish, contact us.**



Davies Parsons Allchurch

**For Further Information On This Newsletter  
Or To Discuss Any Other Legal Problems**

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