

Wollen Michelmore

SOLICITORS

Is it time to review your will?

I'm sure that most people will be aware that, for deaths occurring after 5 April 2017 an additional Inheritance tax (IHT) allowance is now available. This can increase the basic amount that any individual can leave before IHT becomes payable being the Nil Rate Band, which currently stands at £325,000. This additional allowance, the "residence nil rate band" (RNRB) is given by an increase in the basic Nil Rate Band available to every individual and, in simple terms, is available where an individual leaves his or her residence to a direct descendant by Will.

Although the RNRB has also been referred to as the "main" residence nil rate band, this isn't quite right. For a property to qualify under the RNRB legislation, it is enough for the property, at some point, to have been a residence (i.e. not necessarily a main residence) of the person who has died.

In a well drafted Will, by April 2020, the RNRB can have the welcome result that estates up to £1million could be inheritance tax free for married couples. It sounds simple, but it's not safe for couples to assume that, provided your estate is below £1million, you will have no IHT problem and that it does not matter what precise provisions are included in their Will.

One main area where it is now very important to review your Will is where the Will contains some form of Trust provision.

Historically, IHT planning for married couples has focused on ensuring that full use is made of both Nil Rate Bands. Where the main asset of the couple was their main residence such planning would involve sometimes very complex schemes based on debt or charges against the property occupied by the surviving spouse. However, since the introduction of the transferable nil rate band (TRNB) in 2007 a husband and wife who leave everything to each other can carry forward two Nil Rate Bands. In addition, the introduction of a transferable RNRB for those who leave their home to their descendants provides a greater incentive to make sure that there is an outright gift on the second death to direct descendants.

Of course, there may be other reasons for using the RNRB and/or NRB on the first death of a couple and these reasons will always be considered by your solicitor when discussing what is right for you in your Will.

Only certain Will trusts will allow the RNRB to apply, and therefore, if you think you have a Trust in your Will, it is important that you take legal advice to ensure that your Will does not prevent your estate from benefiting from this tax saving.

It's important to realise that even if one of a couple has already died and their Will would not have enabled the RNRB to apply because for example, it included a particular type of Trust, it may be possible to change the terms of that Will by a Deed of Variation if no more than two years has passed since the individual died.

A recent report from figures provided by the Probate Register suggests that around half of adults still do not have a Will, which is quite extraordinary.

A Will needs to be regularly reviewed and updated, especially after any major life event such as marriage, divorce or having children, as well as after any significant changes to the tax rules, such as the introduction of the RNRB.

For more information on the content of this article please contact Marinella Hollies on 01803 832191 or email Marinella.Hollies@wmlegal.co.uk