

# Tax, wills & PROBATE

## parry law solicitors

Summer 2010

### SHOULD YOU GIVE YOUR HOUSE TO YOUR CHILDREN?

If you are facing the possibility of having to fund care home fees or are concerned about there being an Inheritance Tax (IHT) liability when you die, it may be tempting to think about gifting your house to your children, so that when the day comes, it is out of your estate. In many cases, however, this will fail to produce the desired result.

#### Here's why...

If you gift your house to your children but continue to live in it, then the gift will normally be a 'gift with reservation', which means that the property will be treated for IHT purposes as having never left your estate. If, however, your children dispose of the property, any increase in value after the gift to them has been made will normally make them liable for Capital Gains Tax (CGT) on the increase. If you retain it, the increase will be free from CGT if the property is your principal private residence.

Similarly, if you give your house to your children, your local authority may still take account of the value of the house when assessing your contribution to your long-term care costs.

Other points to consider before relinquishing ownership of your property are:

- If you wish to raise funds for whatever reason, you will not be able to obtain a loan based on the equity you had in the property;
- If a child divorces or is made bankrupt, you may lose the property, which may also happen if the property is used as security for a loan on which the borrower defaults;
- If your children need cash, they may exert pressure on you to leave the property so that it can be sold; and



- If your child predeceases you, their beneficiaries will be the new owners and may prove to be more difficult to deal with.

Giving away a major asset requires serious thought. If you are considering the problems of IHT planning, wealth preservation or funding care, please contact us for advice.

### GENERAL INTENTION CANNOT PRESERVE WILL



will after forming a legal union.

In a recent case, the court had to consider the situation in which a man who had entered into a civil partnership died without having written a new will.

The man entered into a relationship and made a new will. This revoked an earlier will, which left his estate to a relative and various charities. His new will stipulated that it was intended to survive a subsequent civil partnership and he

It is not widely known that marriage or civil partnership invalidates an existing will, except in clearly defined circumstances, and many disputes have arisen because a deceased person failed to make a new

duly went on to form a civil partnership with his partner.

The new will was disputed on a number of grounds, but the case in point considered only the question of whether it was revoked by the civil partnership.

In order for a will not to be revoked in these circumstances, it must be clear that the testator was intending to form a civil partnership with a particular person. In this instance, that intention was not clear from the wording of the will, which merely made a general statement that the will was intended to survive a civil partnership. Accordingly, the new will was revoked.

Since the man's original will was also invalid, because it was automatically revoked by the civil partnership, his estate will now be dealt with under the intestacy rules.

If you are considering marriage or civil partnership, we can advise you on how best to deal with these sorts of issue.

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## FARMING FAMILY OVERTURN WILL



overturn their late father's will on the ground that he was mentally incapable when he created it.

The man had made an earlier will, executed in 2001, which left his two sons the family farm on which they had worked all their lives, subject to a life interest in favour of his wife. His two married daughters, both of whom had moved away, were bequeathed legacies of £15,000 each.

In a bitter contest involving members of a Norfolk farming family, two brothers have persuaded the court to

The man's wife died in 2006. At that time, the daughters returned and discovered the contents of their father's will. Within a week, one of the daughters had driven her father to the office of their solicitor, where a new will was executed. This divided the bulk of the estate between the two daughters.

In a hearing which lasted three days, the will was deemed by the court to be invalid. Crucially for the brothers' case, there had been no attempt to check the man's mental state, despite his age (89) and the fact that his wife of 65 years had been dead for less than a week when the new will was made.

If you have an elderly relative who wishes to revise their will, we can advise on how best this can be achieved in order to minimise the risk of a later challenge.

## TAX TAKE LEAPS FOLLOWING INVESTIGATIONS OF WEALTHY

The decision of HM Revenue and Customs (HMRC) to target the wealthy for scrutiny has led to a massive increase in the tax yield from their investigations – said to have increased from £81 million in 2007/8 to £373 million in 2008/9.

Complex avoidance schemes and the use of non-resident income sources have been subject to sustained attack by HMRC and this is expected to continue, with the UK tax authorities increasing information sharing with those of foreign countries and requiring disclosure of foreign accounts.

HMRC will also be looking forward to reaping additional income as the Court of Appeal has rejected the argument put forward by a wealthy Seychelles resident, finding that even though for many years he spent fewer than 91 days in the UK (and thus, in his view, maintained non-resident status), his residence for tax purposes was his home in Oxfordshire.

## COURT AGREES TO REVERSE SETTLEMENT ERROR

Although a trustee is personally responsible for the actions they take, the law is not so harsh as to prevent a trustee who makes an innocent mistake from rectifying it.

In a recent case, a 'receiver' for a mentally impaired man (her husband) was appointed by the Court of Protection: a receiver in this context is effectively a trustee responsible for the affairs of another person. The receiver made a settlement of her husband's assets without giving full consideration to the Inheritance Tax (IHT) consequences of her actions. As a result, an IHT liability ensued.

The receiver sought to have the settlement revoked, as had she been in possession of all the relevant facts at the appropriate time, she would not have made it. HM

Revenue and Customs opposed the application. The court had sympathy for the receiver and agreed that the settlement should be made void.

This case shows the importance of making sure that sufficient care is taken when such decisions are made. Although the end result was the avoidance of the IHT liability, the case will inevitably have involved a great deal of time and considerable costs, both of which were avoidable had the matter been given full consideration at the outset. In addition, in such cases any IHT mitigation exercise would have to be reconsidered after the original situation was restored, which could well have adverse consequences on the family's IHT position.

If you are a trustee, we can advise you on all aspects of trust and tax law.

For all tax, wills & probate enquiries, please contact our Private Client Team on: 01227 276 276 (Whitstable) or 01227 361 131 (Herne Bay)

or visit our website at [www.parrylaw.co.uk](http://www.parrylaw.co.uk)

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