

Hamers

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Protecting your assets
And Making a Will

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Why you need to protect your assets?

Many potential threats to your assets can be protected against by a little early planning. For this you will need to take the advice of a specialist Solicitor, to make sure that you take the appropriate steps to protect your assets and that the work is done for you at a fair price.

The threats to your assets come from these sources

The threats to your assets include -

- High costs if you have no Will
- Inheritance Tax
- Large Court fees if you are unable to look after your assets yourself
- Payment of residential care fees

This booklet explains what you can do to protect your estate against each of these situations.

Everybody ought to have a Will

Looking after your estate will be quicker, easier and cheaper if you have left a Will giving clear instructions as to your wishes. This is particularly the case if you have your own business or have property investments.

You can choose who you leave in charge to deal with your assets, in particular to run a business in the short term and to make sure your family are taken care of until the administration of your estate is finished.

When the value of properties, shares and the proceeds of life insurance policies are taken into account there can be a substantial liability to Inheritance Tax, leaving your beneficiaries with heavy financial burdens. A well drawn Will may reduce liability to Inheritance Tax.

Did you know?

- If you have separated from your husband or wife but not yet divorced them, that person will have rights to your money if you don't have a suitable Will in place.
- If you have a Will but later marry or remarry, that Will is automatically cancelled by law.
- If you have children then a Will is essential to appoint guardians who will care for the children on a day to day basis.
- If you don't have a Will the law sets out who will receive your money and property. In some cases it will divide your estate between your spouse and your children, or if there are no children, between your spouse and your parents, or brothers and sisters. If you don't have a Will and you have more than £125,000 it won't all go to your husband and wife.
- Only if there are no relatives does the estate pass to the government, but remember that distant cousins may be entitled to your estate if you have no close relatives.

Will inheritance Tax apply to your Estate?

You are entitled to a Tax free amount called the Nil Rate Band which increases each year. The present value of the Nil Rate Band is shown on the supplementary sheet. The amount in your estate will be subject to Inheritance Tax at a flat rate of 40%. Any assets passing to a spouse or civil partner are exempt from Inheritance Tax. On the second death of a married couple you have your own nil rate band and any unused nil band of your deceased spouse. Unmarried couples are Taxed on each death. You may need specific advice on reducing the Tax.

Many married couples may not want to leave all their assets to their surviving spouse. They may have children from a previous marriage or may be worried that the money would be used to pay for care home fees. One way to provide for all eventualities is to use a Trust.



Trusts - how do they work ?

In your Will you leave money to a Trust, which is incorporated into your Will. This means that assets to that value are transferred into the Trust, rather than passing to your spouse. The assets can remain in the Trust for the rest of the life of your spouse so that money can be made available to him or her if it became necessary, but then on the death of your spouse the assets in the Trust can be paid out to your children. This would ensure that your children received some of your assets in the future.

If you see a Solicitor at Hamers about this type of trust, we will also advise you on making sure you have sufficient assets available to pass under your Will. It is essential that you see a fully qualified professional for this kind of work, as there are several different kinds of trusts, with differing tax consequences.

We also provide a full Inheritance Tax planning service where we will examine your assets in detail and produce a tailor made report explaining what steps you could take to reduce Tax. The type of additional advice that is required will be different for each person and therefore our fees would be different for each person, but we can give you an indication before carrying out the work.

Avoiding expensive Court fees if you become incapacitated

Hamers look after the finances of people who have become mentally incapacitated through accident, illness or old age. Many of these cases are supervised by the Court of Protection, (which is based in London) who will manage your finances if you are unable to do this yourself.

Very often the Court will appoint a Solicitor to act also in the management of your finances. Unfortunately this can lead to a great deal of expense since the Court charges high fees on an annual basis and also there will be Solicitors' fees to pay. The Court can be slow, as it is busy with work and it is often not a satisfactory way of having your finances taken care of.

You can take control of this situation and make things easier for your family by preventing the need for the Court or Solicitors to be involved in the management of your finances. You would do this by making a Lasting Power of Attorney.

A Lasting Power of Attorney is a document that you can sign whilst you have a full level of understanding appointing another person or persons to look after your affairs in the unfortunate event that you lost capacity through an accident, illness or old age. Most people assume that their husband or wife would have an automatic right to look after their finances but unfortunately this is not the case.

A Lasting Power of Attorney is an essential document for everyone to have in place, and a sensible precaution to take, in just the same way as you would make a Will.

What you need to know about residential care fees

Many people are concerned that their hard earned money and property could be used in the future to pay for residential care fees. If a person goes into residential care then they can apply to the Local Authority for funding but before this is given it is necessary for the person to undergo a means test. The Local Authority will only fund a placement, either in full or partially, if a person's capital is less than the current threshold.

The current threshold is shown on the supplementary sheet. If you have more than this in capital, and most people who own a house will be over this, then the Local Authority decide that you must pay for your residential care fees yourself and this may involve selling your home to raise sufficient money. A lot of people find this situation very distressing as they don't want to sell their home and don't want to pay expensive residential care fees. Families are also upset when they see their parents' house being sold to pay for care fees when their parents have worked a lifetime to pay off the mortgage.

How to protect your assets against residential care fees

It is quite legitimate for you to arrange your affairs in such a way that you pay the least amount of residential care fees or indeed Inheritance Tax. The Solicitors at Hamers are specialists in providing advice tailored to your particular needs as to the best way to reduce these liabilities.



Can I give my house away?

In making an assessment as to whether you qualify for funding a Local Authority will look at any gifts that you have made in past years and therefore giving the house away may not be successful or indeed in your best interests. Every situation is different and we can advise you further on this. If you decide against giving away the house, there are other options.

So is there anything I can do ?

Yes. If you are a couple, whether you are married or unmarried partners, you can take a positive step towards protecting your assets from residential care fees. If your partner or spouse goes into a residential or nursing home the house cannot be assessed towards payment of the care fees whilst you are still living there.

The problem that arises is that most people choose to leave all of their assets to a partner or spouse if they die. This would mean in your situation that the entire estate would pass to your partner or spouse, including the house, and then it could be assessed by the Local Authority to be used to pay your spouse or partner's care fees.

It is possible to prevent this occurring by leaving your share of the house into a Property Will Trust following your death. This is a special type of trust that will prevent your share of the property from being used to pay your spouse or partner's care fees as your spouse or partner will not receive your share of the house under your Will.

Why use **Hamers** SOLICITORS

- Because we provide a specialist cost effective service
- Because we are regulated by the Solicitors Regulation Authority
- Because our costs structure is transparent
- Because we do home visits
- Because we work proactively with your other professionals such as banks, accountants and financial planners

You will often find Wills advertised at very attractive prices in newspapers, but as with most cheap deals there is usually a catch, and the Will can become very expensive when you want it tailoring to your own needs. When seeing us you will have advice face to face on your particular needs and are not simply sold pre-prepared products.

So what do you need to do before you see us?

It is helpful when you come in if you can give us an indication of the value of your estate and whether assets are held jointly or separately.

- We will also need to know if you own any money or property abroad, as special circumstances will apply to your Will.
- It is also helpful if you can write down for us a list of the full names and addresses of everybody who will appear in your Will.
- If you think any of the situations mentioned in these notes apply to you then please draw them to our attention and we will be pleased to provide you with more detailed advice.

In summary therefore you need to consider what you may want to include in your Will, whether a Property Will Trust or other Trusts would be helpful, whether Inheritance Tax is a concern for you and whether you are also going to make a Lasting Power of Attorney.

Please note that Tax rules change frequently. Changes can be made to take effect retrospectively. We have no control over that. Our advice cannot take any account of such future risks of Tax changes.

This firm is regulated by the Solicitors Regulation Authority.

