Looking ahead

Retirement can be a huge change for anyone, which means planning for your life ahead is essential.

There are many positives about life after work – it is chance to do things you've always wanted to do, to spend time with loved ones, or to simply relax and take it easy for a change. It sounds fantastic, and it can be.

We appreciate that there are a whole lot of issues that you will be wanting to consider.

A great of source of information can be gained from the leaflets provided by Age UK on 08001696555 Website: www.ageuk.org.uk.

From a legal perspective there are few issues which you need to be considering if you have not already done so:

- **Making A Will**
- **Updating your Will**
- **Are you excluding or making limited provision for dependents or children?**
- **Inheritance Tax**
- **Making a Lasting Power of Attorney**
- **Looking After Someone**
- **Court of Protection**
- **Using a Solicitor**

I hope you find this guide to be of assistance.

CHRIS BERRY

1. Making a Will

Who should make a will?
If you care about what happens to your property after you die, you should make a will. Without one, the state directs who inherits, so your friends, favourite charities and relatives may get nothing.

It is particularly important to make a will if you are not married or are not in a registered civil partnership (a legal arrangement that gives same-sex partners the same status as a married couple). This is because the law does not automatically recognise cohabitants (partners who live together) as having the same rights as husbands, wives and civil partners. As a result, even if you've lived together for many years, your cohabitant may be left with nothing if you have not made a will.

A will is also vital if you have children or dependants. Without a will there could be uncertainty about who will look after or provide for them if you die.

Once you have had a will drawn up, some changes to your circumstances – for example, marriage, civil partnership, separation, divorce or if your civil partnership is dissolved (legally ended) – can make all or part of that will invalid or inadequate. This means that you must review your will regularly, to reflect any major life changes. A solicitor can tell you what changes may be necessary to update your will.

Using a solicitor
Although it is possible to write a will without a solicitor's help, this is generally not advisable as there are various legal formalities you need to follow to make sure that your will is valid. Without the help of an expert, there's a real risk you could make a mistake, which could cause problems for your family and friends after your death.

What your solicitor will need to know
Once you have appointed a solicitor, they will need the following details from you.

What you own
Details of everything you own, including property, cars, personal valuables, stocks and shares, bank accounts, insurance policies, any businesses you own, and pensions.

Who gets what?
Who do you want to leave these assets to? How do you want to divide your property between your loved ones, friends or charities?

Family and other beneficiaries
Details of your family and status. Are you divorced or has your civil partnership been dissolved? Have you remarried or entered into a new civil partnership? Or are you living with someone without being married to them or being their civil partner? Do you have any children or any other dependants? Anyone who depends on you financially can ask a court to review your will if they feel you have not provided properly for them. If you give your solicitor relevant details, they can tell you about any legal pitfalls.

Guardians
If you have any children who may still be under 18 when you die, you may need to name someone as their legal guardian.

Other wishes
Do you have any particular wishes for your funeral? Do you want to be buried or cremated? Are there any other instructions? For example, if you want to be an organ donor this can be included in your will. However, it is also a good idea to record your wishes on the organ-donor register, or to carry an organ-donor card.

Executors of your will
You must also name the people you want to appoint as 'executors' of your will – the people who carry out the administration of your will after your death. These could be friends or family members, or a professional such as your solicitor. Ideally, you should choose someone who is familiar with financial matters. Make sure you ask your executors whether they are happy to take on this duty as there are long-term responsibilities involved, particularly if you include a trust in your will.

Signing the will
Once the will has been drawn up it is not effective until it has been signed. There are several rules affecting the signature process which, if not followed correctly, will make your will invalid. For example, witnesses and their husbands, wives or civil partners cannot benefit under the will. Many people use staff at their solicitor's office to act as their witnesses to avoid this problem.

Where to keep the will
It is important to keep your will in a safe place and tell your executors, a close friend or relative where it is. People often ask their solicitor to store their wills for them. Most solicitors will do this for free, but sometimes there is a small fee.

Keeping your will up to date
You should review your will at least every year and after any major life change such as getting separated, married or divorced, having a child or moving house. It is best to deal with any major changes by getting a new will drawn up.

Costs
Charges for drawing up a will can vary between solicitors.
They also depend on:
• the experience and knowledge of the solicitor; and
• how complicated your will may be.

Before you decide who to use, check with a few solicitors to find out how much they charge. But remember that cost should not be the only consideration. It is equally important to find a solicitor who is approachable and whose advice you understand.

Remember

By making a Will:

- You name your Executors, the people who deal with all the paperwork and procedures.
- You decide who should inherit your estate.
- You can arrange special bequests to specific people.
- You can appoint a guardian if you leave any young children.
- You can decide what type of funeral you want.

Without a valid Will the Law is in control and what it says might not be a reflection of your wishes. For example:

- If you are married, your husband or wife does not automatically inherit the whole of your estate.
- If you and your partner live together but aren't married the Law favours relatives over a non-married partner.
- Friends and charities do not benefit.

2. Does your will need updating?

If you already have a will in place and your circumstances have changed you may need to update your existing will to reflect this. Divorce, remarriage, the birth of a child and the dissolution of a civil partnership are just a few examples of events that may cause you to reconsider your will.

3. Does your Existing Will Exclude or make limited provision for dependents or family?

In such circumstances it is going to be very important that you have a will drawn together with a supporting statement drawn to seek to satisfy the provisions of a recent Court of Appeal case.

Are members of the family or dependants or people who deem themselves dependants are either excluded from your will provision or limited provision furnished to them. In such case it is open to such parties to make an application to the Court to consider a claim against your Estate for failure to provide any or adequate/reasonable Financial Provision for such person.

You need to not only have a will but also have a detailed supporting statement setting out the reasons for your wishes and having due consideration of all parties circumstances so as to seek to provide a rebuttal to any claim based on the failure to provide any or adequate provision is sustainable. Such statement and consideration can then be noted with your will and if necessary your Executors may then utilise same for any claim against the Estate. Failure to do is likely to weaken the Estate's position in rebutting any challenge.

You need to be aware that any such claims can be extremely costly against the Estate and possibly run into tens of thousands of pounds to deal with such challenges. We mention this so that you are aware of the implications. If you have a supporting statement dealing with the necessary issues to be considered then this will go some significant way to either deterring any prospective claimant from raising a challenge to your estate or providing a form of rebuttal which the Court would have to carefully consider.

Even in circumstances where a party, partner or prospective partner has made declarations stating they have no wish to benefit from your Estate it is still very important to provide a supporting statement as to the circumstances and reasons why no provision is being made. Clearly there is nothing to stop such a party making a claim against your Estate once you have passed away.

4. Inheritance Tax

I can do no better other than to reproduce an excellent article by Age UK this document sets out a basic grounding on this complex issue.

When you retire, you may well rewrite your will. Inheritance Tax (IHT) is a tax that applies not to you but to your estate. The value of all the assets you own on the day after death are calculated, gifts made in the previous seven years are included, then debts such as mortgages are deducted to arrive at the value of your estate.

The first £325,000 is treated as taxable at 0% (the nil rate band, NRB) and the rest is taxed at 40%. It is important to note that lifetime gifts, in excess of the various gift limits, made in the previous seven years are applied against the nil rate band first. The main gift limit is an annual one of £3,000; but there are some others relating to small gifts, regular gifts made out of income (not capital) that do not reduce your normal standard of living, and gifts on marriage to certain relatives. So, if you gave away £200,000 three years before your death, that would absorb most of the current nil rate band, leaving only £125,000 to set against the value of assets you owned at death. Where the value of gifts from the estate exceeds the nil rate band, the rate of Inheritance Tax payable is tapered so that less tax is paid on any gifts made more than three years before death. After seven years gifts are excluded from the estate for IHT purposes.

For most people their house is likely to be the main part of their estate and these days can push even low-income pensioners into the IHT bracket. Do not, however, worry too much about Inheritance Tax. Last year only some 5% of estates attracted the tax.

The rich can afford to pay advisers to help them mitigate or avoid this tax but for most people there are few ways of escaping it. The most frequently asked question is: 'Can I give my house to the children and continue to live in it?' The answer is 'Yes – but only if you pay a commercial rent'. Remember you may well pay more in rent than you save in Inheritance Tax, and, of course, your children will pay tax on the rental income.

Spouses and civil partners can reduce Inheritance Tax liability by becoming 'tenants in common' of their property. This means that each one owns half the property. On death, therefore, only half the house will be considered for IHT and it can be left in a will to whomever the owner chooses and in most cases the value will be beneath the threshold. The drawback is that the surviving spouse or partner only owns half the house and the inheritor of the other half could force a sale. Professional advice from a solicitor is strongly recommended.

A significant change made in October 2007 was that a surviving spouse can now claim the unused part of the deceased partner's nil rate band and add it to their threshold at the rate in force at the time of second death. See the example below. This change was backdated to 1972 where one spouse died before 9 October 2007 and the second survived at that date or after.

Example: Claiming the unused part of the nil rate band Mr A died in 2006/07 and left everything to Mrs A. She therefore acquired 100% of his nil rate band (currently £325,000). Thus on her death, her estate will have a nil rate band of twice the current rate. If she were to die this year 2015/16, her nil rate band would be 2 x £325,000, total £650,000.

If Mr A had left £160,000 to his children, i.e. almost half his nil rate band, his widow would only be able to add just over 50% of the nil rate band in force at the time of her death. So if, as above, she died this year she would only have 1.51 x £325,000 available (£490,000), before Inheritance Tax was levied.

Note: It is only the unused percentage of the nil rate band at the time of the first death, which is carried forward but that percentage is applied to the rates in force at the time of second death.

Inheritance Tax should not be confused with deprivation of assets and income rules, which relate to the means test for the provision of residential care by a local authority.

5. Making a Lasting Power of Attorney

At such times it is always sensible to consider how you will manage your affairs in the future should you be unable to deal with them.

So there are a number of practical steps you can take to prepare for the future.

In the first instance you can be getting your affairs in order by making a Property and Financial Lasting Power of Attorney. When a person (the Donor) has capacity they can give someone else the power to manage their financial affairs. Sadly none of us can predict when we are likely to need a Lasting Power of Attorney so it is important to make such an appointment when a person has the capacity to do so.

A Solicitor can prepare a Property and Financial Lasting Power of Attorney and you will be some way being safe in the knowledge that your financial affairs are being looked after by those you have appointed.

Remember if the Donor leaves it too late & does not have the capacity to make a Lasting Power of Attorney then friends and relatives will need to approach the Office of the Public Guardian for the appointment of a Deputy to deal with a persons financial affairs. Unfortunately this can prove to be very costly and time consuming.

It is a good idea to make a Property & Financial Lasting Power of Attorney whilst you have capacity.

In the second instance and for the same reasons we would also strongly recommend you have a Health & Care Lasting Power of Attorney prepared.

A Health & Care LPA can be made to give your attorney the right to make personal welfare and medical treatment decisions on your behalf. This is particularly relevant where decisions as to what provision of care is required suitable for you and where such care is to be provided. Equally if you wish you can vest power in your Attorney to give or refuse consent to life sustaining treatment on your behalf.

Remember a LPA whether Property & Financial Affairs or Health & Care gives you the opportunity of appointing an **Attorney of your choice** and who you wish to deal with your affairs. This then avoids the possibility of others, who you may deem inappropriate, applying to the Court to be appointed to deal with your affairs.

Lasting Powers of Attorney are essential for everybody regardless of age.

> Think carefully about the person or persons who you appoint as your Attorney. Not everyone is naturally suitable to fulfil that role. If you feel there is no one suitable then you can always appoint a Solicitor to deal with such matters.

6. Looking after someone

At such times you may well have the responsibility of caring for your Mum or Dad or a close family relation or friend.

Have they got a Will?

Has this recently been reviewed?

Have they got a Lasting Power of Attorney Property & Financial Affairs?

Have they got a Lasting Power of Attorney Health & Care?

It is worth checking to ensure these documents are in place and have been recently reviewed to ensure they comply with legislative and case law requirements and reflect the wishes of the person concerned.

7. Court Protection

In some instances a person may no longer be capable of dealing with their own affairs. In such instances it is very important for the carer or person responsible for looking after that party to seek legal advice and if appropriate be appointed as a Deputy to lawfully deal with that persons affairs under the Court of Protection.

8. Using a Solicitor

It is generally advisable to seek the advice of a Solicitor. They have the experience and understanding in such matters. Without the help of an expert, there's a risk you could make a mistake which could cause problem for you, your family and friends.

Just a thought:

By taking action on any one of these issues you can start saving yourself and your family and friends an awful lot of time, money and hassle.

REMEMBER

Many Solicitors will be happy to provide general initial advice at an initial free consultation.

Remember it is important to find a Solicitor who is approachable and whose advice you understand.

We are always pleased to have a chat.

If you would like a free initial consultation then contact me Chris Berry at:

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