

Wills and Trusts

Conserving, protecting, tax planning and nil rate band planning

Each person can leave £325,000 free of inheritance tax (IHT) when they die. A transfer of your wealth to your spouse or civil partner is exempt IHT, and on their subsequent death, their executors can apply to transfer your unused allowance – meaning £650,000 can be claimed on second death.

The residence nil rate band shelters up to another £175,000* of residential property value per person from inheritance tax – a possible total of £1 million for a couple, because it is also transferable, but the property must be left to a direct descendant.

Discretionary trusts established by your will on first death of a couple do not immediately save inheritance tax, and they can't be used to shelter 'residence nil rate band'-qualifying assets, but are they still of value?

And what about life interest trusts?

There are many instances when it could be beneficial:

- **Care fees protection:** You want to protect your assets from being ravaged by care home costs – money and other assets left by your will to a discretionary trust will not count as part of the surviving spouse's resources for the purposes of a local authority financial assessment.** And only the income from a life interest trust will included in the care calculations.
- **Second marriage:** You are on your second marriage and want your current spouse to be provided for during their lifetime but for your assets to ultimately go to your children from a previous marriage – a discretionary or life interest trust ring-fences the money for your children, whilst allowing the widow/er to live in the property and/or benefit from investment income during their lifetime.
- **Divorce and bankruptcy protection:** Assets of a discretionary trust are not absolutely owned by any beneficiary and are therefore not subject to claims by your children's creditors or their divorcing spouse.
- **Loans:** Trustees of your discretionary trust can lend capital to your surviving spouse, or your children if they need it, but it never forms part of their estate or personal assets, as the money ultimately needs to be repaid to the trust.
- **Three or four nil rate bands:** If you have remarried after the death of your spouse and they didn't use their nil rate band, you and your new spouse could claim up to £1,500,000– three nil rate bands, or £2.0m – four nil rate bands – if you were both widowed. Simple wills leaving it to each other on first death will not work in this situation but having discretionary trusts will ensure the full benefit.
- **IHT-free growth:** Assets placed in a discretionary trust on the first death are not part of the survivor's estate, and if they increase in value faster than the increase in the nil rate band the extra growth is not part of the survivor's estate on their death and therefore free of IHT.



Deed of variation

If your spouse has died without establishing a trust with their will or has done so but it's thought that not having a trust would be more beneficial, the beneficiaries can establish a trust, and the trustees can revoke a trust, within two years of your spouse's death

- **Generational planning:** A discretionary trust can last up to 125 years, forming the bedrock for protecting and conserving your family's assets for several generations (subject to the periodic and exit charges).
- **Probate:** Assets in trust are not subject to probate on death, speeding up the process and making money available immediately with trustee agreement.

*For deaths after 6th April 2020. (€150,000 after 6.4.2019. €125,000 - 6.4.2018. €100,000 - 6.4.2017.)

** Provided a trust is not set up solely as a 'deliberate deprivation of assets' to circumvent payment for care home costs. Discuss with your financial adviser

RESIDENCE NIL RATE BAND

An exemption of €125,000 can be applied on a family home left to direct descendants, and is transferrable between spouses and civil partners. It will increase by €25,000 each new tax year to a maximum of €175,000 by April 6th 2020. A discretionary trust does not count as a direct descendant, so at least €350,000 of property value should remain with the surviving spouse to claim the full exemption.

There are several alternatives for ensuring that the exemption is not lost, including a life interest trust, a trustee loan and partial transfer – advice on the most suitable asset for each option should be sought by the executors of your will, according to the prevailing legislation.

TRUSTEE INVESTING AND REVIEW

It is as important to invest well within a trust as with your own money, if you are about to invest, or wish to review your existing trust investments, we provide a free review and meeting to discuss your options and how to invest to maximize your investment returns.

Please contact Tony Dunne APFS, Director and Chartered Financial Planner:
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WILL REVIEW

If you are unsure if your will meets your needs and current legislation, ask us for a free review.



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