



MKB LAW



Private Client

Enduring Power of Attorney, Wills and Inheritance Tax Planning

About Us

The Private Client division at MKB Law offers expertise across the full scope of personal legal matters, particularly in the areas of wills and estate planning, family and matrimonial law, and property matters.

Our Private Client lawyers provide clients with the assistance and help needed to navigate both their personal and business affairs promptly and efficiently. Our team works closely with our other in-house departments ensuring that clients have the benefit of full-service legal advice, including access to specialist advisors in areas such as corporate and commercial matters and dispute resolution.

We will advise you in making the most of your commercial opportunities and help you navigate life's most challenging times; ensuring that you, your family, your reputaton and your assets are protected.

At MKB Law, we are your strategic legal partner.

Contents

Page 3: Enduring Power of Attorney

Pages 4 - 7: Making a Will

Pages 8 - 11: Inheritance Tax, Gifts and Property Transfers



Enduring Power of Attorney

An Enduring Power of Attorney is a legal document that enables you to choose someone (or several people you trust) to make decisions about your property and finances on your behalf.

An attorney can use the EPA from the moment it is signed, if it is set up to allow this. However, if you lose capacity then they will need to register the EPA with the Office of Care and Protection (OCP), which is part of the court system in Northern Ireland.

You can give your attorney different powers depending on what you want them to be able to do. You can give them:

- General power, which allows them to do most things with your property and finances on your behalf, except things you can't legally delegate, such as making a will;
- Limited powers to manage certain aspects of your property and finances, as described by you on the EPA form. For example, you might allow your attorney to manage only your bank accounts, but not your house.

You can put conditions or restrictions on both general and limited powers. You can also appoint different attorneys to have different responsibilities, but it's a good idea to keep arrangements as simple as you can.

Things an attorney can do on your behalf include:

- Signing cheques and withdrawing money from your bank accounts
- Buying or selling shares or property (including your house)
- Using your money to pay for your residential or nursing care.

The attorney's powers relate to property and finance matters only - not any other powers over you. They can't decide where you live or what medical treatment or care you receive.

Why should I make an Enduring Power of Attorney?

- Reassurance in knowing that if you are unable to take decisions for yourself in the future, someone of your choice and trusted will make that decision for you.
- You can allow your attorney to make decisions even if you can still make them yourself. You do not have to do this, but it can be a useful way of giving yourself some extra support. It also enables your attorney to get familiar with all your financial and legal arrangements.
- Taking the decision to make an EPA now will make things easier for the people close to you in the future. It will be more difficult for them to get permission to act on your behalf when you are not in a position to confirm consent.

Making an EPA can start discussions with your family or others about what you want to happen so that decisions in the future will be based on your wishes.

Making a Will

End-of-life planning is a topic which is hard to address and easy to put off. Many people find it challenging to make a Will or think about making a Will as it can raise some difficult issues and questions. This guide sets out the very real benefits of making a Will and outlines what the process will involve.

Do I need a Will?

In short, yes. Please see the section below setting out the many benefits of making a Will.

You may also be asking yourself if your Will needs to be prepared by a solicitor or whether you can use a ‘DIY’ option. Almost without exception, a professionally drafted Will is the better option. Not only can you be confident that your estate will pass according to your wishes and instructions, but we will guide you in thinking about your assets and family circumstances to ensure that all matters are appropriately dealt with.

Indeed the form of a DIY Will is likely to be limited, and your particular estate and circumstances may benefit significantly from a particular form of Will. For example, some people may be well advised to set up a trust in their Will for reasons of asset protection or flexibility and this would certainly require professional and careful drafting.

Without the assistance of a solicitor, you may be missing the opportunity of leaving your estate in the most secure and efficient way possible.

Before we consider the benefits of making a Will, you may find the following table useful to help you understand some words that are frequently used in Will drafting.

Word/Phrase	Meaning
Testator	You, the person making the Will.
Estate	All of your assets (the property you own or have a right to) and possessions, whether on your own or with someone else, as well as any debts or liabilities you have, for example, your credit card debt or mortgage (the liabilities will reduce the value of the assets to leave a ‘net’ estate).
Executors	These are the people who will collect in and look after your estate (ie: to establish what assets you have and ensure liabilities are settled), pay any inheritance tax and distribute your estate according to the terms of your Will.
Beneficiary	A person who stands to benefit from your Will.
Residuary Estate or Residue	This is the amount or assets left of your estate (often it is the bulk of your estate) after gifts have been made, debts settled and tax paid
Intestate or intestacy	Dying without a valid Will in place, with the result that intestacy law (ie a set of prescriptive rules) will determine who gets what from your estate.

Benefits of making a Will

There are many benefits to making a Will. These include:

- Giving you control by ensuring you do not die intestate; this means that your assets pass to those you intended (and are not dictated by general intestacy rules) and that your estate is administered by people you choose (again, not dictated by intestacy rules)

- Ensuring you have appointed executors which makes it much easier and quicker to administer your estate

- Ensuring that the people who matter most to you are looked after if you die - this is particularly important if you have young children or if someone vulnerable is dependant on you

- Helping you focus on and think about what your assets and liabilities may be - this helps you put your affairs in order today and allows you to think about what assets and liabilities may arise on your death and who these pass to (eg life insurance or pension benefits may be payable on your death)

- Ensuring your estate and what you leave behind is maximised by using tax planning and tax reliefs appropriately, particularly in relation to inheritance tax (which is the main tax to consider when doing your estate planning)

Inheritance tax is essentially a tax charge on the value of your assets when you die. There are a number of well-known reliefs and exemptions (such as the spouse exemption, where leaving your estate to your spouse means there is no inheritance tax payable). The inheritance tax charge is usually paid out of your estate by your executors when they are administering it.

However, the application of inheritance tax rules is not straightforward. As set out above, a significant benefit of getting a professionally drafted Will is ensuring that you leave your estate in such a way so as to minimise any inheritance tax charges (or other tax charges).

- Ensuring (either through the Will itself or in a supplementary document) that some other very important matters are dealt with, specifically funeral wishes and appointing guardians if you have young children

- Securing benefits which arise in relation to particular assets you may have, for example:

- A foreign property (eg if you have a home abroad, it will be important to establish how and to whom this will pass on your death and to ensure to the extent possible this is in accordance with your wishes and not local law)

- Business property (eg if you are a company or business owner, preparing a Will would allow you to consider and plan the succession to the business (so that it does not have to be sold following your death), as well maximise any possible tax reliefs for passing the business to the next generation)

- Farming or agricultural land (as above, if you own or manage farmland a Will would allow you to do succession planning and also maximise tax reliefs)

- Allowing you to make gifts to particular people or charities or organisations that are important to you

- Allowing you to the opportunity to discuss your estate planning with your family which will significantly reduce the prospect of disputes arising after your death

Drafting the Will

Once our team has advised you on the options and taken your instructions fully, they can prepare a draft Will which you can review.

It is possible that some further calls, meetings or discussions may need to be had during the Will drafting process. This will depend on the complexity of your estate and your personal circumstances.

For example, it may be advisable for you to have discussions with potential beneficiaries or those who may not benefit in order to reduce the possibilities of disputes later.

Another example is where you have foreign property and some local legal advice may need to be obtained to ensure all your assets are dealt with appropriately, or where you need to speak with potential executors of your Will to ensure they would be happy to act as such.

Signature and storage

Once you are happy with the draft Will, a final signing version is prepared. Once the Will has been signed, the original will be retained in our fire-proof safe.

Alternatively, you may decide to store your Will at home and you will be given safe storage recommendations. In either case, you should keep a copy in an accessible place, and those who need to locate your Will (your next of kin or your executors) should know where to find a copy and the original.

This will be particularly important if your Will contains funeral wishes, as these will need to be quickly ascertained on your death to ensure they are followed in time.

Reviewing and updating a Will

Once your Will has been signed, this will give you peace of mind that your estate will be dealt with according to your wishes.

It is a good idea to review your Will at least once every five years in order to ensure it still accurately reflects your wishes. For example, many things may change between the date of your Will and the date of your death from your personal and family circumstances to your asset base.

In particular, if you get married after you have made your Will (and the marriage was not contemplated at the time), this will automatically revoke your Will and you must ensure that you prepare a new one. If you get divorced, it is also advisable to prepare a new Will to reflect your changed family circumstances.

It is also important to remember that inheritance tax rules can and do change. Once a Will has been drafted, it is not usually the obligation of the draftsman to keep you up-to-date with any changes, which reiterates the need to seek professional advice when the time comes to review the Will.

“Reviewing your Will at least once every five years ensures it still accurately reflects your wishes. If you get married after you have made your Will, this will automatically revoke your Will and you must prepare a new one. If you get divorced, it is also advisable to prepare a new Will to reflect your changed family circumstances.”

Inheritance Tax, Gifts and Property Transfers

Inheritance tax (IHT) is a tax charged on a person’s death, based on the value of their net estate immediately before they died; the net estate is the total value of assets owned by that person, less the total value of debts owed by them.

In order to prevent people avoiding the tax by making large gifts shortly before they die, the tax also extends to gifts made within seven years before the death. Some other gifts and events which are not linked to a person’s death are also caught by IHT.

When is Inheritance Tax payable?

IHT is payable on transfers of value, which are made when:

- A person makes certain gifts (or deemed gifts) during their lifetime
- A person dies
- On certain events relating to trust funds

Lifetime gifts

There are three types of lifetime gifts for IHT:

- Exempt gifts
- Transfers of value which are immediately chargeable to tax, with the possibility of a further tax charge at a later date (‘chargeable lifetime transfers’)
- Transfers of value which do not attract any immediate tax liability but still carry a potential later tax charge (‘potentially exempt transfers’)

A gift may include a sale of an asset or property for a price which is less than the market value of that asset or property, depending on the circumstances. A gift may not necessarily be a transfer of cash or an asset and it would also include a failure by a person to take action, which provides a financial benefit to another person.

An individual may also be treated as if they had made a gift if a company makes a transfer to a person for no consideration and that company is controlled by persons who include that individual.

Exempt gifts

Certain gifts are completely exempt from IHT. Some exemptions apply because of who has received the gift and other exemptions apply because the value of the gift falls below a limit. The most commonly used exemptions are:

- Gifts made between married couples or civil partners. There are special rules if the recipient spouse is not UK domiciled
- Gifts to charities
- Gifts made in consideration of marriage (subject to limits depending on the relationship of the donor to the recipient)
- Gifts within the annual exempt limit of £3,000 per tax year. If the exemption was not fully used in the preceding year, the unused allowance (or unused part of it) can be carried forward to increase the present year’s allowance to a maximum of £6,000
- Gifts of up to £250 to any individual each tax year
- Regular gifts which are made out of the donor’s income, which do not adversely affect the donor’s standard of living

Potentially exempt transfers (or PETs)

A gift by one individual to another is exempt from IHT, but only if the person making the gift (‘the donor’) continues to live for seven years after the date of the gift. This type of gift is therefore ‘potentially exempt’. There is no IHT to pay when the gift is made and it does not need to be reported to His Majesty’s Revenue and Customs (HMRC) at that time.

A gift by an individual to certain types of trust is also potentially exempt, but most lifetime gifts to trusts will be immediately chargeable (see Chargeable lifetime transfers below).

If the donor dies within seven years after the gift, the value of the gift, and the value of other gifts made in that seven year period, will be brought back into account in assessing the IHT on the deceased donor’s estate. The ‘failed’ PET would be taxed before the estate, so such gifts would be taxed at a rate between 0% and 40%, depending on their value and the value of previous failed PETs.

Chargeable lifetime transfers (or CLTs)

A gift by an individual to a company or to most types of trust would attract an immediate IHT charge.

The exception is a gift to a trust for a disabled person, which must meet specified conditions. A gift to such a trust would be a potentially exempt transfer.

The rates of IHT applicable to the up front tax liability are 0% (for a transfer with a value of up to basic nil rate band (NRB), currently £325,000) and 20% (for a transfer with a value over the available NRB). In assessing the rate of tax for the immediate charge to tax on a CLT, the value of other CLTs made in the previous seven years is brought into account.

For example, if Mr X makes a CLT of £300,000, there would be no up front tax charge as this would fall within his available NRB, but if he makes a further CLT of £125,000 in the following year, £300,000 of the 0% band would have been used, so that only £25,000 of the 0% band of tax would be available and the remaining £100,000 would be taxed at 20% (subject to any available tax reliefs).

If the donor of a CLT dies within seven years after making the transfer, there is a further assessment of IHT on the value of the CLT, in a similar way to a PET made within seven years before the donor’s death (above). In the case of a CLT, credit is given for the IHT assessed when the gift was made.

Following the example previously noted, if Mr X dies in the third year and the 0% band is still £325,000 and the death rate is 40%, the CLT made in year one would be assessed on the death but the deferred tax charge would be nil because it would fall within the 0% band. The CLT made in year two would use up the remainder of the 0% band and the balance of £100,000 would be charged at 40%, with a credit for the 20% tax already paid, making additional tax payable on the CLT of £20,000.


Tapering relief

If the donor retains a benefit (or the possibility of benefiting) from the gifted asset, for example if they were to give away their house but keep living there, the donor would be treated as continuing to own that property for IHT purposes. Therefore, IHT would be payable on that property on the death of the donor, regardless of the time that has passed since the date of the gift.

There are some exceptions to this rule. For example, if a donor were to give away property and pay a full commercial market rent for its continued use, the gift would be validly made for IHT purposes and there would not be a reserved benefit.

There may be some situations where a double charge to IHT arises on a gift, such as where a chargeable lifetime transfer incurs an immediate charge to IHT but the asset transferred is also treated as having been retained by the donor for IHT purposes so that it could also be chargeable on their death. There are ‘double taxation regulations’ which prevent a double tax charge in some cases.

This can be a complex area of law, so specific advice should be taken on any arrangements which may allow a donor to benefit from a gift, whether or not they intend to actually do so, and the possible effects of the double taxation regulations.



“Our advice is tailored to meet your objectives whether that be tax efficiency, asset protection or succession planning.

MKB Law prides itself on being a client focused firm with you, your family and your business always at the centre of the process and experience.”

Death

On a person's death, IHT is charged on the total value of their estate. Subject to available exemptions and reliefs, the estate is broadly the value immediately before the person's death of their property, assets and cash less the value of liabilities, such as mortgages and other debts.

The value of lifetime gifts (whether PETs or CLTs) made by the person in the seven years prior to their death is brought back into account. Those gifts are effectively added to the estate for the purposes of calculating IHT, or additional IHT, on the gifts, and the IHT on the estate.

Certain exemptions apply to the deemed transfer made on death. Those exemptions include:

- Gifts made between married couples or civil partners. There are special rules if the recipient spouse is not UK domiciled
- Gifts to charities

Trusts

A trust is itself subject to IHT on certain events. The event which is taxable depends on the type of trust, but, broadly, chargeable events are:

- Where a person is entitled to the income from the trust or treated as being entitled to the income for IHT purposes - the death of that person
- Where no one is entitled to the income from the trust or treated as being entitled to it for IHT purposes, eg where the trustees have complete discretion as to how they apply the trust property amongst a list of possible beneficiaries.

Each ten yearly anniversary of the creation of the trust and the date when trust property ceases to be trust property, eg due to a distribution to a beneficiary.

Reliefs from IHT

Certain lifetime gifts and transfers made on death are subject to IHT relief. Commonly used reliefs include:

- **Business property relief** - this applies to the value of a trading business or an interest in a trading business (for example a partnership) and also to shares in an unquoted trading company. The relief can be retrospectively withdrawn if qualifying conditions are broken after the date of the transfer
- **Agricultural property relief** - this applies to the agricultural value of land which is used for agricultural purposes. The rate of relief may be 50% or 100%, depending on the circumstances

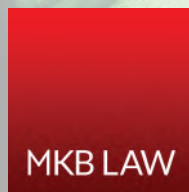
The qualifying conditions for these reliefs are complex, so specific advice should be taken before relying on this relief being available.

IHT planning

It may be possible in some circumstances to take steps during a person's lifetime to reduce the future IHT liability on their death.

At MKB Law, our experienced and pragmatic team will support you through every step of the process. Our advice is tailored to meet our clients' objectives whether that be tax efficiency, asset protection or succession planning. MKB Law prides itself on being a client focused firm with you, your family and your business always at the centre of the process and experience.

Should you wish to speak to one of the private client team, please contact us on 028 9024 2450.



14-18 Great Victoria Street, Belfast, BT2 7BA
Tel: 028 9024 2450 Email: info@mkblaw.co.uk

mkblaw.co.uk

Copyright © MKB Law 2023. Subject to Terms & Conditions. All information correct at time of print.