

Where there's a will...

Julie Butler on the recession, intestacy, statutory legacy and the need for a well-drafted will



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The increase in the statutory legacy in cases of intestacy from 1 February 2009 has made the tax planner focus on the importance of advising clients of the need for a will. It has been argued that in a recession there is greater need to ensure all clients benefit from the protection of a well-drafted will rather than during the boom times. The answer is that a will is required for all clients – the problem is the client understanding of the importance.

Many advisors would argue that as client estates fall in value there is less to worry about as there are less assets to protect. Estates involving a share in a business or business assets, however, are likely to be more complex to administer. Business interests are more difficult to value, there can be greater complexity with regard to bank securities and guarantees and beneficiaries can take a more aggressive approach with regard to contesting a will due to their own financial concerns and worries – hence the need for a well-drafted will.

Statutory legacy changes

From the 1 February 2009 the statutory legacy is now increased to:

- GBP250,000 (from GBP125,000) where there is a surviving spouse or civil partner and children;
- GBP450,000 (from GBP200,000) where there is a surviving spouse or civil partner and parents or siblings, but no children.

The statutory limits only apply in certain circumstances. In some situations, the surviving spouse or civil partner, or the

children, can inherit without any limit. The full rules on inheritance in intestacy are as follows:

1. If there is a husband, wife or civil partner, and children:
 - The spouse/partner inherits the personal chattels, the first GBP250,000 (was GBP125,000) and a life interest in half of what is left.
 - The children of the deceased, including illegitimate and adopted children, share between them half what is left straight away, if they are 18 or over, and the other half when the surviving parent dies.
2. If there is a husband, wife or civil partner, and relatives but no children:
 - The spouse/partner inherits the personal chattels, the first GBP450,000 (was GBP200,000) and half of what is left.
 - The parents of the deceased, or if they have predeceased their child, the brothers and the sisters or their descendants, share the other half of what is left.
3. If there is a surviving husband, wife or civil partner, but no other relatives:
 - The surviving spouse/partner inherits everything.
4. If there are children, but no living husband, wife or civil partner:
 - The children share everything equally.
5. If there is no husband, wife, civil partner or children:
 - Everything will pass to the next available group of relatives.
6. If there are no available relatives:
 - Everything goes to the State.

From a client awareness viewpoint, point 6 can be a strong reason to convince a client of the need for a will.

“The statutory legacy figures were last increased in 1993”

The statutory legacy figures were last increased in 1993. The government has acted because of the concerns that the levels are too low. This latest follows a consultation by the Ministry of Justice: *Administration of estates – review of the statutory legacy*.

The new figures are rather lower than were proposed by the Department for Constitutional Affairs' 2005 consultation paper *Administration of Estates: Review of the Statutory Legacy*, which recommended GBP350,000 and GBP650,000. Where property is owned jointly (for example, a house owned as joint tenants), the deceased's share will accrue to the survivor outside the estate, and so will not count towards the statutory legacy.

A mix of business and private assets benefit from tax reliefs through will planning

Obviously the statutory legacy is as stated, tax free under the surviving spouse exemption. Intestacy does not make best use of ensuring that the children (and possibly other family members) make best use of the business and agricultural property reliefs (BPR and APR) and the spouse inherits assets that do not attract such reliefs, i.e. maximum use of BPR, APR and surviving spouse exemption can be achieved with a will, but cannot be guaranteed in intestacy.

Promoting the need for a will

Clearly highlighting the change in statutory legacy to clients can be a positive trigger to highlight to clients the need to consider a well-drafted will with benefit of the choice of executors, protecting assets within the complexity of a recession and to tax planning around business and non-business assets. ■