





## Contents

Introduction .....	3
Our Services .....	3
Trusts .....	4
Wills .....	6
Lasting power of attorney .....	<b>Error! Bookmark not defined.</b>
Planning for Residential Home Fees .....	8
Inheritance Tax .....	9
Nil Rate Band Discretionary Trust.....	10
The Tax Treatment of Discretionary Trusts.....	11
What to do when someone has died .....	12
Fees and Tax Rates .....	14



## Introduction

As a result of our extensive experience of dealing with the concerns of those planning for their future, the elderly and their families we are able to give you the most up to date and practical solutions to any problems you may have.

Our main consideration is to help you put your affairs in order, so as to give you and your family maximum peace of mind.

Crossmans have had a specialist department for many years and during this time have advised and assisted hundreds of clients to sort out those often complex questions about their property, assets and financial affairs.

Louis Browne is the partner in charge of this department. He qualified as a solicitor in 1979 and has specialised in wills trusts and tax since 1985. Louis is based in the Cambridge office, but we are able to offer advice from our Cambridge or our Enfield branch.

For those local clients unable to come into the office Louis is pleased to arrange home visits.

Crossmans also provides a comprehensive range of legal services to both individuals and businesses.

## Our Services

### Trusts

A trust is a legal device, which enables you to separate ownership of an asset (whether that asset is a house, investment or cash) from the right to use the assets or to receive its income. A trust is not a complicated legal device that has no place outside a Dickens novel unless you are a multi-millionaire. Trusts offer a simple and effective solution to a whole range of practical problems such as the death of parents with young children, divorce, how to provide for children of an earlier marriage, bankruptcy, spendthrift children, disabled children, and many other situations.

### Will making

If you don't make a Will your estate may not go to the people you want it to go to. The future of your family may depend on having prepared an effective and legally valid Will. With our specialist knowledge of property, trusts and tax law we can help you to ensure that your estate passes to the people you want it to go to in the most effective way.

### Free will review

If you made your Will more than three years ago it might require revision either because of changes in the law, in particular tax law, or because of changes in family circumstances that may have arisen. We offer clients who made their will with us and also any current clients of the firm, a free



Will review service. This simply involves a short discussion to make sure that your Will still meets your requirements.

### **Lasting power of attorney**

Have you considered who would manage your affairs if you became incapable of handling them yourself, following a stroke or simply old age? An Lasting power of attorney enables you to appoint someone who you trust to look after your financial affairs with minimum effort, delay and expense.

### **Inheritance tax planning**

Tax law is complex and ever changing. We can advise you on the best way to plan ahead and to arrange your affairs so that your estate can be saved simply by having a tax efficient will.

### **Administration of estates**

Administering the estate of someone who has died is a heavy responsibility and involves personal risk in that if you make a mistake you might be liable to the creditors, family or beneficiaries of the person who has died. It also involves much more work than most people would ever imagine. We offer a dedicated service to take the burden off your shoulders.

### **Long term care planning**

It is a fact of life that many people may need to go into a Residential Home or even a Nursing Home when they get older. It is also true that your capital and home may have to be used to pay for this care. We offer simple and effective planning to help to protect your estate against Residential Home fees so that your hard earned savings can be passed onto your children or your family.

## **Trusts**

### **What are trusts?**

A trust is a device which makes it possible to separate legal ownership of a thing from the right to use that thing or, if it produces income, the right to receive its income. The person who owns the assets in a trust is called a trustee and the person who has the use of the assets is called a beneficiary.

Many people think that the trusts have no place in the modern world unless you are a millionaire. However, they provide an effective solution, and in many cases the only solution, to many problems that are familiar to all of us.

### **Here are some examples of how trusts can be useful.**

#### **Trusts for Children**

If parents die at an early age leaving small children, they will normally want to leave their estate to those children. However, the children will be too young to manage the fund and in fact from a legal point of view, they will be incapable of doing so. The fund will have to be held by trustees until the children reach a responsible age. During that time the trustees will look after the investments, they



can use the income to help with the children's education and so forth, and they can also advance capital to help the children if they think that the purpose for which it is intended is sensible.

### **Spendthrift Children**

Not everyone is good at handling money. A trust can ensure that the capital that would normally be given to the spendthrift beneficiary is held by people who are good with money and they can ensure not only that the fund is used to provide maximum benefit for the beneficiary but maybe to preserve the capital so that it might also benefit the beneficiary's dependants.

### **Trusts for the disabled**

The most effective way to provide for a disabled beneficiary particularly if they are suffering from a mental disability would be to establish a trust so that the trustees will hold the capital and will use the income for the benefit of the disabled beneficiary.

### **Trusts and Second Marriages**

John and Mary are married to each other but both have children by their previous marriages. John wants to provide properly for Mary if he dies first but he also wants to ensure that his children by his first marriage get a proper share of his estate.

The solution is for John to leave his estate or part of it in trust for Mary so that she can have the use of the estate or its income for the rest of her life if John dies first. However, on Mary's death the capital of the Trust Fund will go to John's children.

### **Tax Planning**

Trusts are often used for tax planning purposes, for example they might enable a beneficiary to have the use of assets or to receive their income without those assets being treated as part of their estate for Inheritance Tax purposes.

## **Types of Trust**

There are three basic types of trust: -

### **Contingent Trusts**

Trusts where assets are held on trust for someone until something happens. The most common example of this is where a fund is held for a child until he or she reaches 21 or some other age.

### **Interest in possession trusts**

This is a simple form of trust under which a particular person or persons have a right to have the use of trust assets or to receive their income for a certain period (normally until they die) and then some other specified person or persons are entitled to the capital.

### **Discretionary Trusts**

Under a discretionary trust, instead of there being a particular beneficiary entitled to income and a particular beneficiary entitled to capital, there is a class of potential beneficiaries and the Trustees can allow any member of that class of beneficiaries to receive the income from the Trust Fund or to have the use of assets in the trust. The Trustees can also pay out capital to any member of the class of beneficiaries. A discretionary trust is useful because it provides maximum flexibility.



## Our fees

As trusts tend to be tailor made it is difficult to give a precise figure, but Louis Browne would be pleased to discuss your requirements and give you an approximate figure before you were committed to continue.

## Wills

### Why should you make a will?

1. If you don't make a Will your estate, or parts of it, might go to the wrong people.
2. A Will is the only way you can be sure that your estate goes to those whom you want it to go to.
3. A Will is the only way of making sure your estate is administered by people you can trust.
4. If you have small children you can use a Will to appoint Guardians.
5. If you are wealthy a Will can help you to save tax.
6. If you are not so wealthy a Will ensures that your estate is administered and distributed in a simple and cost effective way.

### Things to think about:

1. Do you want your whole estate to go to your husband/wife/partner if you die first?
2. If you and your husband/wife/partner die together or if you die after him or her do you want the whole of the estate to go to your children?
3. At what age do you want the children to become entitled to capital?
4. What is to happen to your estate if your family all die together, for example in a car crash?
5. Who do you want to appoint to be the Guardians of your children if you and your husband/wife/partner die before they have reached 18?
6. Who do you want to appoint as Executors?

These are people who are responsible for carrying out your wishes. There is nothing to prevent a beneficiary, for example your husband/wife/partner, from being Executor.

On the second death, especially if money might have to be held in trust for children until they reach a certain age, we would recommend appointing a close friend or family member who knows the children and will be aware of their needs together with a professional Trustee such as a partner in this firm. A professional Trustee is important in order to make sure that the trusts are run properly from a technical point of view and also provide an objective point of view.

These are the kind of things that a couple should think about; similar considerations apply to any Will e.g. you should consider who will be the main beneficiary/beneficiaries and what is to happen if the main beneficiary or one of them dies before you.

## Tax Planning

The tax that may be payable when someone dies is Inheritance Tax. Subject to certain reliefs and exemptions your estate is charged with Inheritance tax at the rate of 40%. The two most common reliefs are:



1. the first slice of a person's estate (known as the "nil rate band") is not taxed.
2. gifts to your husband and wife are exempt from Inheritance Tax.

Huge tax savings can be made by careful use of the nil rate band so it is important, when making a Will, to discuss your assets, how you own them, and their value in order to know whether tax planning is required.

### Wills and second marriages

Parties to a second marriage, particularly if they have children by the first marriage, may wish to consider leaving their estate or parts of it such as a house, in trust for their wife/husband/partner.

### Our fees

Please refer to the section at the end of this guide, which contains our fees. Appendix 1.

## Lasting power of attorney

### What is an Lasting power of attorney?

An Lasting power of attorney (LPA) is a document by which one person (the Principal) authorises another person (the Attorney) to do things and to sign documents on his behalf.

An ordinary Power of Attorney automatically becomes invalid if the Principal becomes mentally incapable; this is, of course, when it would be most useful to have an Attorney. The LPA was therefore introduced in the mid 1980's as a special power of Attorney that continues in force if the Principal becomes incapable, provided certain conditions are fulfilled.

### Who should sign an EPA?

Mental incapacity does not usually afflict the young and middle aged. However, anyone could become mentally incapable as a result of an illness or accident.

We believe that everyone should sign an EPA as a precaution against such accident. Signing an EPA has the additional benefit that it can be used at anytime in the same way as an ordinary Power of Attorney, for example, if a document has to be signed while you are away on holiday.

In short, an EPA is not just for the mentally incapable; it can be used at any time the Principal wants it to be used, either on a one-off occasion or regularly.

### What are the Attorney's powers?

Unless the EPA itself limits the Attorney's powers, the Attorney can do anything in relation to the Principal finances, except :

- The Attorney cannot sign a Will on behalf of the Principal
- The Attorney's power to make gifts is limited
- The Attorney cannot give or refuse permission for medical treatment



### **What protection does the Principal have against fraud?**

The most important protection is to keep the power of Attorney in a safe place. We recommend that the Power of Attorney should be kept in our safe like a Will; we would only release it with your consent.

If the Principal becomes mentally incapable protection is given by a registration procedure.

### **What happens if you become mentally incapable?**

If the Principal becomes mentally incapable the Power of Attorney will cease to be valid unless the Attorney registers it with the Court of Protection.

Before registration the Attorney must give notice of his intention to register to the Principal and the Principal's closest relatives.

This gives the Principal and his relatives an opportunity to object to registration.

### **How do I go about making an EPA?**

An EPA is a simple form that we can prepare quickly and at no great expense. We can then store it here free of charge and let you have certified copies for your use.

### **Our fees**

Please refer to the section at the back of this guide which contains details of our fees.

## **Planning for Residential Home Fees**

### **The problem**

At present typical basic fees for a Residential Home are £400 Per week. You will receive no help with paying these fees until your capital has been reduced to £16,000 and you will only be entitled to have the fees paid in full when your capital sinks below £10,000. Even then only a basic fee is paid; if you are in a Home that charges more you will either have to pay the rest yourself or move into a cheaper home.

Every year many elderly people have to sell their homes and use the sale proceeds to pay for Residential Home fees. To many of these people the Home represents their life savings and to see these drain away is very upsetting.

### **The use of trusts**

We can help you to preserve your hard earned capital by means of Trust.

This is a device that will enable you to give your house away whilst reserving the right to carry on living in it as if it was still yours. This means you can reduce your capital so as to enable you to claim assistance with the Residential Home's fees much earlier but without giving up the right to live in your home.



You can sell the house and buy another and under certain types of Trusts any money left over can be paid to you.

If you ever have to move into a Residential Home your house can be let and you could receive the rents, or if the house is sold and the sale proceeds invested, you would be able to receive the interest or dividends.

When you give your house away it is transferred to Trustees who will then be the people who have authority to sell or let the house.

It goes without saying that you must be very careful when selecting your Trustees; it is most important that you appoint people whom you can be sure will carry out your wishes.

For this reason, we recommend that one of the Trustees should be you, the person setting up the Trust, and that another Trustee should be a solicitor. This will give you a strong element of control since you would be a Trustee yourself and, since the solicitor has no financial interest in the Trust they can be relied on to carry out your wishes.

Any Trust should be set up early. It is dangerous to leave it until the last moment because an interval of time must pass between transferring your home to the Trustees and claiming assistance with Residential Home fees. Six months is the absolute minimum.

### Our fees

The advice surrounding these matters is charged according to time, and Louis Browne will be happy to give an indication of fees on request.

## Inheritance Tax

### When does inheritance tax apply?

Many people might be surprised at how large their estate would be if they take into account the value of their home, life insurance policies and perhaps death in service benefits. They might also be surprised at the amount of Inheritance Tax to be paid. On an estate of £440,000 the tax payable would be £66,000; on an estate of £530,000 the tax would be £102,000.

The tax that may be paid when a person dies is Inheritance Tax (IHT). It is also payable on certain types of lifetime gifts.

The first slice of your estate (the nil rate band) is taxed at a 0% but the whole of your estate above that figure may be taxable. The current figures for the nil rate band and the rate of IHT are set out at the end of this guide under the section headed 'Fees and Tax rates'

### Reliefs or exemptions

Reliefs or exemptions are available for gifts of certain types of property (for example a business or assets used in a business) or for gifts to certain persons (for example one's husband or wife or to a charity).



## Planning for Inheritance Tax

Simple IHT planning involves arranging your affairs so as to make best use of the nil rate band and of these other exemptions. It is not our practice to suggest complex or risky schemes. The methods we propose to clients are always simple and straightforward; after all it is your financial security that is the paramount consideration, not reducing your tax bill.

Usually the first consideration will be a tax efficient Will. We can advise on the best way of reducing the tax bill on your death whilst at the same time making sure that your family is safely provided for. When a husband and wife are making Wills, careful use of the nil rate band can allow you to save over £100,000 in tax.

Lifetime gifts, whether absolute or into a trust, and trusts of life insurance policies can also be useful tools in minimising IHT. We can advise on what type of gift to use and prepare all the necessary documents.

Certain types of trust are standard devices for reducing inheritance tax. You will find in this Guide information about the Nil Rate Band Discretionary Trusts, the advantages of setting one up and tax treatment of it later in this guide.

We can also handle the technical administration of trusts such as annual accounts and tax returns.

### Our fees

Please refer to the section at the back of this guide for our fees.

## Nil Rate Band Discretionary Trust

A nil rate band discretionary trust is a standard device for reducing inheritance tax.

Often a husband and wife will want to make Wills along the lines that, on the first death, everything passes to the survivor and, on the survivor's death, everything is to pass to the children.

Unfortunately, a simple Will such as this would be inefficient from the point of view of inheritance tax. As you will see from our inheritance tax information sheet gifts between spouses are exempt from inheritance tax so if the nil rate band of the first to die goes to the survivor it is wasted because it is passing to an exempt beneficiary. On the first death no inheritance tax is payable because of the spouse exemption but in the second death all the assets of the couple are bunched into one estate and only one nil rate band is available.

It would be much more efficient if, on the first death, the nil rate band could be given to a taxable beneficiary with the remainder of the first to die's estate going to the surviving spouse. No tax would be payable on the first death and on the second death the estate of the survivor would be reduced by the amount of the nil rate band that went to a taxable beneficiary on the first death. On present figures the saving in tax on the second death would be over £100,000.

However, for the most couples the loss of the first to die's nil rate band would leave the survivor short of capital. The current nil rate band is set out in the section at the back of this guide headed



“fees and tax rates”. More often than not the survivor will need that capital to provide him or her with income or a home.

A nil rate band discretionary trust is a way of addressing this problem without losing the tax benefit.

A trust is a device which enables you to separate legal ownership of an asset from the right to use it or to receive its income. A discretionary trust is a trust under which there is a class of potential beneficiaries and the trustees can allow any member of the class of beneficiaries to have the use of trust assets or they can pay trust income to any member of that class of beneficiaries. They can also pay capital to any of the beneficiaries.

Under the normal nil rate band discretionary trust the class of potential beneficiaries will include the surviving spouse, children, grandchildren and anyone else whom you might want to benefit.

After the death of the first to die the survivor can receive the income of the trust fund or have the use of assets held in the trust for the rest of their life but, because they did not have an absolute right to benefit from the trust the value of the trust fund will not be added on to the survivor's estate for the purpose of calculating inheritance tax on the survivor's death.

A great advantage of a discretionary trust is that it is extremely flexible. Firstly, you can change your Will if you change your mind or the tax planning becomes unnecessary. Secondly, on the first to die's death, it seems that the trust is no longer appropriate, it can simply be ignored and the whole estate can be paid out to the survivor. Finally, if the trust is allowed to carry on as planned but later the survivor needs to raise capital, the trustees can pay out trust capital to the survivor although this may give rise to a tax charge.

The principle disadvantage of a discretionary trust is that ownership through a trust is more complicated than absolute ownership. However, it is perfectly possible to implement the trust in such a way as to reduce the administration of the trust to a level that is not at all burdensome.

In short, whenever inheritance tax is an issue the safe and conservative course of action is to include nil rate band discretionary trusts in your Wills because they provide a means for saving inheritance tax without actually committing you to the trust.

A more detailed information sheet about the discretionary trust is enclosed.

## The Tax Treatment of Discretionary Trusts

The discretionary trust will have its own Inheritance Tax regime. As long as the Trust continues there will be a periodical charge to Inheritance Tax which works as follows: -

The Trust Fund is valued on every tenth anniversary of its creation, this is, on each tenth anniversary of the first to die's death.

The current Nil Rate Band is deducted from the current value of the Fund.

The excess of the value of the Trust Fund above the current Nil Rate Band is taxed at 6%.



When property is distributed from the settlement there will be an exit charge. This is calculated on the property leaving the trust in the same way as the periodical charge save that the exit charge is apportioned according to the number of years since the last periodical charge or (if the exit charge arises within ten years of the creation of the trust) since the trust was created.

Although the Nil Rate Band discretionary trust is beneficial for the purposes of Inheritance Tax it is rather harshly treated for Capital Gains Tax.

The Trustees only get half the annual exemption of an individual. When assets are transferred out of a Trust to a beneficiary there is a disposal for Capital Gains Tax purposes.

There is no tax-free uplift in base value when a beneficiary dies.

To illustrate this let us suppose that the value of the first to die's estate at the date of their death is £250,000 and £500,000 at the date of the survivor's death. If the estate of the first to die had been given to the survivor absolutely the gain would be completely tax-free. The survivor's Personal Representatives would take over the assets in the estate at their value at the date of death without any tax being payable. If, on the other hand, the first to die's estate goes in to a discretionary trust there is no such tax free uplift in value and the Trustees must be careful with their investment management so that they take modest gains each year with a view to using their annual allowance.

It is therefore essential to take professional advice when implementing a discretionary trust in order to ensure that tax is avoided or reduced to a minimum, otherwise the inheritance tax advantage gained might be wiped out by Capital Gains Tax.

## What to do when someone has died

### Things to do

When a family member dies the first thing that you must do is to register the death with the local registrar. In the Cambridge area the registrar is based at Shire Hall on Castle Hill. You should telephone to make an appointment; the telephone number is 01223 717172.

Having registered the death two things need to be done as quickly as possible.

First contact the deceased's bank or building society where their current account was held to advise them of the death and give them a copy of the death certificate. If the deceased had an account in their sole name this will freeze the account and stop any standing orders or direct debits from being paid. Then you should go to see an undertaker about the funeral arrangements. If you are not sure what the deceased's wishes were and they left a Will it is a good idea to see whether the Will gives any directions as to funeral arrangements.

You must now think about the administration of the estate. This involves finding out what the deceased owned and what their debts or liabilities are. Accounts will have to be closed and assets sold or encashed. All the debts must be paid and you must make sure that the deceased's tax affairs are in order. When all this has been done you can distribute the estate.



## How the estate will be divided

How the estate is to be distributed depends on whether or not the deceased left a Will. If the deceased left a Will the estate will normally be distributed in the way set out in it. If the deceased did not leave a Will the estate will normally be distributed in accordance with a set of rules known as the Intestacy Rules.

## What we can do to help

Administering an estate involves a great deal of work and a heavy responsibility. There is also some risk since if you make a mistake you are likely to be personally liable. For this reason most executors will choose to employ a solicitor's firm to help and advise.

The first meeting with the solicitor will probably take about an hour. These are some of the documents and information you will be asked to provide:

- Death Certificate
- Birth Certificate
- National Insurance Number
- Details of tax office and reference number
- Details of anyone to whom the deceased owed money
- Details of the deceased's assets (you should bring with you recent bank statements, building society passbooks, insurance policies, premium bonds, and any other title documents for assets)
- Full names and addresses of the executors.
- Full names and addresses of people to whom things are left in the Will (the beneficiaries).
- If any beneficiaries are under 18 their dates of birth and parent's addresses

We will write to the beneficiaries to tell them what they have been left in the Will. We send a copy of the Will to beneficiaries who have been left a share in the estate rather than a specific gift.

We also write to ask for valuation of assets and building society and bank balances. At the same time we gather the information needed to complete the deceased's tax returns.

When this information is to hand we are ready to apply for a grant of probate or letters of administration and we will normally ask you to come into the office to go through the papers.

## A grant of probate

A grant of probate is a court order that confirms that the Will is valid. At the same time it confirms the appointment of the executors named in the Will. Letters of Administration is a similar Court Order where there is no Will and it appoints the administrators of the estate. In these notes we use the expression "Grant of Representation" which covers both Probate and Letters of Administration.

Having had our meeting to read and sign the probate papers we can often apply at once for the Grant of Representation; it will be issued within two weeks or so.

However if the estate is liable to pay Inheritance Tax the proportion of tax attributable to cash, shares and investments must be paid before we apply for the Grant of Representation. Building Societies allow us to withdraw money to cover the tax. Banks will not allow such withdrawals and so



it may be necessary to borrow money from a bank to cover Inheritance Tax. The loan arrangements often take quite some time.

Any Inheritance Tax attributable to assets other than cash and investments, for example a house, can be postponed and paid in instalments though all the tax must be paid if the asset is sold.

When the Grant has been issued we will apply to close the deceased's bank and building society accounts and arrange for premium bonds, savings certificates and so forth to be encashed. We arrange the sale of assets such as shares, which may need to be sold, and we can deal with the transfer of any assets that are to be transferred to beneficiaries.

**When cash becomes available we will:**

1. settle all the deceased's debts
2. pay specific legacies left in the Will
3. normally we will make a payment on account to the residuary beneficiaries who have a share in the estate.
4. We will also make sure that the deceased's tax affairs are in order

Finally we prepare accounts and make the final distribution to the residuary beneficiaries.

**Our Fees**

Unless the estate is very small we offer you a choice:

You can either elect to be charged a flat fee which will be 3½% of the gross estate or if you prefer we will charge on a time basis at our current hourly rates. The time related charge will normally be lower but the percentage charge gives clients the security of knowing what the charges will be.

If the estate is very small the work will be charged by time.

**Fees and Tax Rates**

**Wills**

Single Will      £180 + VAT                      Pair      £210 + VAT

Home visits are available at a small extra charge. A discount will be given to our Conveyancing clients for will made during the Conveyancing process:

Single will      £150 +VAT                      Pair      £180 + VAT

**Lasting power of attorney**

Single              £120 + VAT                      Pair      £150 + VAT

**Tax Efficient Will containing a Nil Rate Band Discretionary Trust**

We charge £750.00 + VAT for the preparation of the tax efficient Will containing a nil rate band discretionary trust.

**Inheritance Tax Rates**

Nil rate band      £275,000                      Rate of Tax      40%