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Estate Planning and Elderly Law Definitions

We've put together a list of terms you will come across during the process of estate planning. The following guide looks to explain these terms and help you understand how they relate to this important documentation:

Inheritance Tax

Inheritance Tax is paid if a person's estate (their property, money and possessions) is worth more than £325,000 when they pass away.

The first £325,000 of your estate will have no Inheritance Tax (HT) to pay. This threshold is known as your 'nil rate band'. Any gifts you make to individuals will be exempt from Inheritance Tax, as you live for seven years after making the gifts. The gifts will become 'Potentially Exempt Transfers' (PETs).

If you die within this seven year period and the total value of the gifts is less than your nil rate band, any tax due will be paid out of your estate.

If you die within the seven year period and a gift alone is valued at more than the Inheritance Tax threshold, tax will be paid on its value by the individual receiving that gift, or by the representatives of the estate. The amount over the threshold will then be taxed at a rate of 40%.

Taper Relief

A relief can be applied to the amount of Inheritance Tax due that will reduce the amount payable, known as 'Taper Relief'. This taper relief applies to the period between three and seven years of making the gift and has percentages on a sliding scale that applies to the different time periods. The appropriate percentage will then be deducted from the 40%, entitling your estate to a reduction of Inheritance Tax.

Annual Exemptions

There are other annual exemptions from paying Inheritance Tax. This includes:

- Gifts worth up to £3,000 in each tax year, or any unused part of the £3,000 exemption to the following tax year.
- Wedding/Civil Partnership gifts - parents can each give £5,000, grandparents £2,500 and anyone else £1,000.

- Small gifts of £250 to as many individuals as you like in one tax year.
- Regular gifts/payments out of your income - these gifts are made out of your after tax income. They must be regular payments and ensure that your income that is left can still cover your usual day-to-day expenditure.
- It is advised that you keep a record of any gifts you make as this will keep track of whether an annual exemption applied.

More detailed information about Annual Exemptions can be found on the HMRC website here: <https://www.gov.uk/government/organisations/hm-revenue-customs>

Potentially Exempt Transfers (PET'S)

Any transfer that does not qualify as a Potentially Exempt Transfer will be a lifetime transfer that is immediately chargeable to Inheritance Tax (HT). Whether HT arises is dependent on the value of the chargeable transfer and also the amount of your nil rate band (£325,000) remaining. When making the transfer, the transferor (you) will incur a 20% lifetime tax that is payable during your lifetime. However, if you die within that seven year period, the individual receiving the chargeable transfer will have to pay an additional 20% tax.

For example:

If you have your full nil rate band remaining (£325,000) and you make a transfer for £400,000, the excess of £75,000 will be immediately chargeable at 20% and £15,000 would have to be paid.

If your nil rate band has been used up, the £400,000 transfer will wholly incur 20% at £80,000. There is the possibility of waiting for the seven year period to pass, and then attaining your full nil rate band again.

Business Property Relief (BPR)

Business relief can be claimed on transfers of certain types of business and of business assets, provided that it qualifies as a 'relevant business property' and you have owned the asset for the minimum of two years before the transfer.

This relief reduces the value of the transfer of the relevant business property, whether it is during your lifetime and on passing away. This may be an area you will need further financial advice about. Talk to our team at John Fowlers Solicitors we can point you in the right direction for these further expertise.

Capital Gains Tax

Capital Gains Tax (CGT) is a tax on the profit/gain you make when you sell or 'dispose of' an asset. This includes giving it away or transferring it to someone else. It is important to point out that CGT is liable what you gain from the asset, not the amount of money you received for the asset.

For example:

A property was bought for £50,000. It was then sold for the price of £250,000. The £200,000 gain would be the sum that is liable for CGT.

You will not incur CGT if you sell or dispose of the main home you reside in. Typical types of property that attract CGT are usually for business purposes or a second home.

There is an entitlement to an 'Annual Exempt Amount' which for the current tax year 2014/15 is £11,000. CGT will be payable on the excess after the £11,000. The total sum remaining will be taxed at a lower tax rate payer of 18%.

If you leave the assets to the beneficiaries in your will, they will not be liable for CGT until they decide to sell or dispose of it. They would also have to get a valuation of the asset at the date of death.

When making a gift to family member or other persons you're connected with, you will need to work out the gain or loss. At the time you make the gift, you must get a valuation of the asset to compare with the amount you bought it for. However, if you give the asset away for no monetary value, the amount you receive will be nothing. There will be no gain, just a straight-forward loss. This loss can only be deducted from the gains you make on the gifts/disposals to the same person of the initial gift.

Private Residence Relief

When you sell or 'dispose' of your home you will not have to pay CGT. This is provided that:

- During the time you owned it, it has been your main residence and has been used for the purpose of being your home and nothing else
- You must not have been absent, other than the allowed period of absences
- Your home must not have been used exclusively for business purposes
- The garden or grounds including any buildings is no greater than the permitted area of 0.5 hectare
- To work out the relief, you will need to calculate the period you've owned the

property for. This starts on the date you bought or acquired it or the 21st March 1982, whichever date is the latest. Ownership then ends on the date you sell or dispose of it. From 6 April 2014, the final 18 months of ownership will apply for relief automatically, regardless of how you have used that property in that period of time.

If you qualify for Private Residence Relief and make a loss on your disposal, this will not be an allowable loss that could have been offset against your gains. An allowable loss is when an asset has been disposed of and makes a loss, instead of a gain. For CGT purposes, this loss would be deducted from your gains and ultimately deduct the CGT to pay. However, this would not apply when claiming Private Residence Relief.

There can be an issue of giving a 'gift with reservation of benefit'. However, this will only affect you if when giving your property away, you still reserve the right to use and benefit from it. For Inheritance Tax purposes, it would be treated as still being your property. Therefore, when disposing of your property and moving out, this would be completely acceptable provided that when returning to the property it would be for social visits and short stay periods. This gift would not be treated as part of your estate for Inheritance Tax, provided that the seven years has surpassed from making the gift.

Most importantly, if you live in and own more than one property, you can nominate one as your main home. This must be made within two years of the date from which you changed the number of properties you live in. If you stated that you moved out of your previous property in November 2013, you have until November 2015 to nominate your current property. A request will need to be written to HMRC and your nomination must also be signed.

Life Interest Clause - as tenants in common

The effect of the Life Interest clause is that upon the death of the first of the co-owners, his or her share in the property will not pass automatically to the surviving co-owner, but will pass either in accordance with the provisions of his or her Will.

Owning the property in this way means that you can decide to leave your share of the property to relatives, friends or children. It also gives you the opportunity to plan inheritance tax and mitigate the impact of retirement or nursing home care fees on the estate. This is only in the instance that you should you need to go into care due to them only owning a specified share of your property. Increasing numbers of home owners are choosing to hold their properties as tenants in common to cut inheritance tax, avoid care home fees and protect their share of the property.

For example

If the time came where you were unable to live at the property and required 24 hour care,

the property would need to be sold to gain funding. However the 100% value of the property would not be taken into account with regards to care costs. This is because only *your* share would be attributed for, the other shares would be held by your children.

Transfers part/whole of property

A transfer also has the ability to minimise care fees. It is not able to avoid them completely, but you would be protecting your property for your family's future. The transfer would become a deprivation of the asset (when you meaningfully deprive yourself of an asset simply to avoid paying care home and similar fees) and reservation of benefit (when you give something away but continue to use it for your benefit). If this is seen to be the case on any transfer, then the Local Authority could possibly write back into your Estate and anything you had transferred to your children could be taken away to be used for your care.

Equity Release

This allows you to release the equity tied up in your home without moving. When you enter into an equity release, it will bind you to those terms and insist on continuing until the terms of release take place. Essentially, you will pay the sum of money back in your lifetime or on your death. Companies do differ with their terms and conditions.

At John Fowlers Solicitors, we offer legal advice, rather than financial. Our Private Client Department have the experience and knowledge to have a look through your chosen equity release plan and outline all the terms and conditions of the release. We would be able to highlight to you what appears to be the downside to the plan and any risks involved.