PASS IT ON IN A TRUST

There are many reasons why a trust can be a useful way of disposing of assets in your lifetime or of ensuring that your wishes are carried out after your death.

A trust is easier to describe than to define. There are certain qualities that are common to all types of trusts. There are three elements of a trust relationship. These are:

- there has to be a settlor or transferor who is the person setting up the trust;
- there also has to be a trustee or transferee who is the person on whom the trust property is settled; and
- there has to be a beneficiary or person for whom the trustee holds the trust property.
  A beneficiary does not have to be a person. It can, for example, be an institution, a class of people or even a family pet.

For Inheritance Tax (IHT) purposes, a trust is defined as 'including any disposition whereby property is:

- held in trust for persons in succession;
- held for a person subject to a contingency;
- held on trust to accumulate the whole or part of the income or to make payments at the trustees' discretion; or
- where property is charged or burdened with the payment of an annuity'.

The most common reasons for using a trust in IHT planning are:

- to transfer a limited interest in an asset or assets;
- to maintain a flexible approach to income and asset distribution; or
- to protect the interests of minors.

These options can be used individually or together in accordance with the wishes of the settlor.

An example of where a limited interest is transferred is a disposition where property is left to the transferor's wife for life and on her death the trust fund passes to his children. This allows the trustees to pay income from the trust to the wife during her lifetime.

In the case of minors, a trust can be used to protect their interests until they reach the age of majority. In this case the property would, for example, be settled on the trustees for the benefit of the settlor's minor children and then passed to them when they reach the age of majority.

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BREACH OF TRUST MEANS LOSS OF PROFITS

A recent case demonstrates the high standard of conduct demanded of the administrators of estates.

A Mr Loftus had died intestate in 1990. He had executed a will in 1986, but no copy of it could be found. He left substantial assets which included a builder's yard, accounts in offshore banks (which were the subject of an Inland Revenue enquiry) and shares in a trading company. The various members of his family did not get on well. The administration of his estate was carried out by his daughter, Margaret, who obtained letters of administration for the estate in 1991 without the knowledge of the rest of the family.

In 1999, Margaret transferred the builder's yard to her son for a minimal consideration although the rest of the family were unaware of this until August 2000. In December 2000, the family went to court to force Margaret to give an account of her dealings in the administration of the estate. The account was not forthcoming, so in 2003 the family commenced proceedings. In court, Margaret claimed that an informal family agreement over the distribution of the estate's assets had been reached in 1992. The other beneficiaries under the estate claimed that there was no such agreement and that the transfer was a breach of trust.

The judge accepted this argument and rejected Margaret's contention that the case could not be brought since it arose more than 12 years (the limitation period) after the event. Margaret argued that the relevant event to 'start the clock' for the 12 year rule was the date of her father's death (i.e. August 2002), but the judge ruled that the 12 year period commenced at the end of the executor's year, not the beginning. The executor's year is the period of one year during which an executor cannot be compelled to distribute the estate.

The effect of the ruling was that the son was considered not to have purchased the yard in good faith and therefore it and any profits he earned in running it were held on trust for his grandfather's estate. Furthermore, he was not able to be reimbursed for his expenditure on the yard (other than normal operating expenses), even though the result of this was to create a windfall for the estate.

PENSIONS SIMPLIFICATION - WHAT IS HAPPENING?

The pensions world is set to change, following a series of reviews instigated by the Government. Most of the changes apply from April 2006 and will affect many people coming up for retirement.

The main changes are as follows:

Minimum Retirement Age

Currently, retirement benefits can be taken from the age of 50 years and must be taken at 75 years if not taken earlier. The latter will not change, but the former will change from 6 April 2010, after which the lower age limit for taking retirement benefits will be raised to 55.

Pensions

From 6 April 2005 it has not been necessary for the part of an annuity purchased from the 'protected rights' element or from a money-purchase occupational pension scheme to increase annually.

The cap on maximum pension benefits put in place by HM Revenue and Customs (HMRC) will be removed, but the total amount of tax-privileged pension fund is limited to £1.5m (the Standard Lifetime Allowance or SLA). This limit should increase annually. The 'excess' funds will carry a tax charge of 55 per cent if taken as a lump sum and 25 per cent if they are taken as income. Where the pension fund exceeds the SLA already, an application for exemption can be made to HMRC until 6 April 2009. Where the lump sum taken from a pension fund exceeds 25 per cent of the fund value, there will be a charge to income tax. Similarly, where the fund is paid out because the pension fund owner dies before it vests, any excess of the payment over the SLA will be taxable.

Also, there are a number of restrictions being put on pension drawdown arrangements, whereby the pension is drawn over a period of time.

Contributions to Pensions

The maximum which can be put into a tax advantaged pension scheme annually (the 'annual allowance') will be £215,000 from 6 April 2006. This should increase annually. Contributors will be able to claim tax relief on £3,600 of contributions in all cases and 100 per cent of their 'relevant earnings' where this is more, subject to the cap imposed by the annual allowance.

Trivial Pensions

There are also provisions which will permit people over 60 years old to take trivial pensions (less than one per cent of the Standard Lifetime Allowance) as a lump sum. The commutation of all such pensions must be carried out in a single year.

Says David Wright of Woodgate FS, "Pension planning is an area in which good advice is a must. It interacts with inheritance tax and income tax planning and family financial planning generally. We can help you plan ahead to achieve the best results for you and your family."

SEMINAR SUCCESS!

The latest in the Moss Solicitors and Woodgate Financial Services seminar programme was held recently. Presented by Andy Jervis and David Wright from Woodgate and Kate Lees of Moss, the event was supported by more than 250 clients and their guests over four different dates.

Attendees heard about the back ground to Inheritance Tax (IHT), how to make a tax efficient Will, as well as financial remedies to inheritance tax planning.

A member of the Charnwood U3A, Finance Group who attended one of the events said, "I have had some positive feedback from my guests on the presentation you gave on Inheritance Tax. You may have gathered some of them are very well informed and one member said it was the best presentation he had heard on the subject!'

Future planned seminar topics will include:-

Pension Changes 2006 - are you prepared for 'A' day?

Exploring how the changes to pensions due to come into force in April 2006 will effect those who have not yet reached retirement age.

Holiday Home Ownership

Taking a look at the different ways people can invest into holiday homes overseas and in the UK.

Further information on these events will be detailed in our newsletters or alternatively, visit either of our websites.

WHEN CUTTING SOMEONE OUT OF A WILL CAN FAIL

When a will operates in a way that is unreasonable, when all circumstances are looked at in an objective way, and thus fails to provide for a potential beneficiary who is thus unfairly excluded, a claim can be made under the Inheritance (Provision for Family and Dependants) Act 1975.

A claim may only be made by:

- the spouse of the deceased or a former spouse of the deceased who has not remarried;
- someone who was living for the two years prior to the death of the deceased in the same household as the deceased's spouse;
- a child of the deceased or any person treated as a child of the deceased's marriage; or
- any person who, immediately before the death of the deceased, was being wholly or partly maintained by the deceased.

In order to succeed, a claim must demonstrate that provision from the estate is necessary and that the provision made in the will was not reasonable bearing in mind what provision ought to have been made and what provision could have been made out of the assets of the estate. A spouse is entitled to reasonable financial provision whether or not the provision is necessary for his or her maintenance. All other claimants must demonstrate need. Divorced spouses can also claim under the Act if the financial settlement ('ancillary relief') has not been agreed at the date of death.

If reasonable financial provision has not been made, the court can order a variety of remedies, including the transfer of property and payment of a lump sum.

DISABILITY - MEANS TESTING APPROPRIATE

When a person lives with a disability, changes to the physical structure of their home are often required and such alterations can be expensive. A recent case considered the liability of a local council to provide financial assistance for alterations to the home of two severely disabled boys. These were needed in order for them to be cared for safely.

The boys' parents claimed that the local authority was bound by statute to pay for the alterations but the local authority claimed that its duty depends on whether the parents have or have not sufficient means to carry out the alterations themselves.

The parents refused to supply a statement of means and commenced proceedings against the council to determine whether they had the right to refuse to be subjected to a means test. When the court ruled against the parents, they took their case to the Court of Appeal.

The Court of Appeal took the view that where parents have sufficient means, they will themselves make any necessary alterations to their home to care for their disabled children, if there are no other ways of funding the work. They would be disinclined to fund the alterations were there an alternative source of finance. Accordingly, it was proper for the local authority to refuse the claim because it was reasonable to expect the children's parents to pay

for the alterations unless it could be shown that they were unable to do so or that for them to do so would result in undue hardship.