

## FUNDING THE THIRD AGE: RESIDENTIAL CARE

It is claimed that over 90 per cent of healthcare expenditure on any one person is usually incurred in the last year of life. In the UK we seldom have reason to be aware of this because the NHS is a 'free at the point of use' service.

However, not all costs connected with one's declining years are to be paid out of the public purse. For anyone with capital exceeding £19,500, nursing home fees are not met by the state (in this case the local authority) but by the resident themselves. With the fees for many nursing homes running in excess of £30,000 a year, this can eat away at the assets of the average family very quickly.

Intelligent estate planning and the use of trusts can be an effective way of safeguarding your assets.

Arrangements involving trusts can also reduce your estate for Inheritance Tax purposes. However, it is necessary to take appropriate

steps well in advance of going to live in a nursing home. Local authorities are quick to challenge any arrangements they consider have been made with a view to avoiding payment of nursing home fees.

There is an exception to the general rule that the resident must meet the cost of nursing home care. When the Department of Health transfers to a nursing home a patient who is recovering from a serious illness, the local authority is obliged to meet (or contribute to, in some circumstances) the cost of the care.

As is so often the case, these matters can be complex and it is important to be aware of your rights and financial responsibilities. The most sensible approach is to anticipate potential future problems and set the necessary machinery in place well before it is needed.



**We can advise you on the financial and legal aspects of all estate planning.**

## 'LIVING WILLS' TO GET LEGAL BACKING

**PROPOSALS OUTLINED IN THE GOVERNMENT'S NEW MENTAL CAPACITY BILL WILL GIVE PEOPLE A CLEAR LEGAL RIGHT TO DRAW UP A 'LIVING WILL'.**

A living will is a document in which a person stipulates what sort of medical treatment they want if they should become seriously ill and can no longer make their wishes known. People can use the wills to make it clear that they do not want treatment to prolong their life in certain circumstances. The specified circumstances are normally when they are not conscious and are terminally ill or in a 'persistent vegetative state', with no realistic hope of recovery.

A living will is made when its author is of sound mind and is then held until it may be needed. The courts do already recognise living wills but the Mental Capacity Bill seeks to enshrine in statute rights attaching to them, which are currently determined only by case law.

The proposals will give greater certainty that the wishes of the individual will be respected and should also provide greater protection for the medical staff involved.

Overall, the Bill aims to provide a statutory framework to protect

vulnerable people, carers and professionals. It will ensure that those who are incapacitated are at the heart of any decisions made which affect them.

It is proposed that the Enduring Power of Attorney (EPA) be replaced by a Lasting Power of Attorney (LPA). This new Power will allow someone to appoint an attorney to act on their behalf should they no longer be able to do so. However, unlike an EPA, a person will be able to elect to apply the LPA to welfare and healthcare problems as well as to financial matters. The Bill does provide for existing EPAs to continue to be effective.

The law on euthanasia (mercy killing) will not be changed – it will continue to be unlawful.

There is a great deal of discussion ongoing regarding these proposals



and there are likely to be changes before the new Bill becomes law. It is not yet known when this is likely to happen. Sadly, at some point in our lives we are all likely to be affected by a lack of capacity to make decisions, either personally, or because someone close to us can no longer make decisions for themselves. It is sensible to plan ahead for this eventuality by making the necessary legal and financial arrangements.

Contact us if you would like to discuss making a living will or putting in place a power of attorney.

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## CHANGING WILLS FOR BENEFIT



these were originally introduced to protect dependents from being unfairly deprived, they are now used mainly to reduce Inheritance Tax (IHT).

A will expresses a person's final wishes and it is commonly thought that a will is irrevocable after death. However, provided all the beneficiaries agree, it is normally possible to vary a will provided that the application is made within two years of the date of death.

A Deed of Variation (DOV) is a legal document which can be used to 'rewrite' provisions of a will. While

IHT currently bites (2004/5) at £263,000. After the recent surge in house prices, this means that many estates now fall within the scope of the tax. Often, a will specifies that a surviving spouse will inherit all the assets of the deceased. In some instances, the surviving spouse is comfortably off and would like to pass assets to the next generation. By using a DOV, the unneeded assets can be passed

directly to them (or into trust), with a potential IHT saving of 40 per cent on the value transferred.

To be effective, a DOV must be made in writing and signed by all of the beneficiaries who would lose entitlement to the affected part of the deceased person's estate. If this affects any person under age eighteen, the deed may need the formal approval of the court.

We have a lot of experience in drawing up DOVs. Although they can be very effective, they can also be complex, especially where trusts are used. The best solution is to leave a will that does not need to be changed. This is especially true since the Government has made noises about legislating against DOVs.

**If you haven't updated your will recently, we recommend you check it: if it needs amendment, we will be pleased to assist you.**

## CHANGES TO PROBATE ON THE WAY

Plans are afoot to implement changes which are intended to reduce the average time it takes from application to grant of the probate of a will from four weeks to two and which will allow probate queries to be dealt with by telephone and e-mail.

Under UK law, almost every will must be probated before the distribution of the estate can commence. This normally involves swearing an oath, which can be inconvenient and distressing.

The plans are outlined in a Court Service report entitled 'Review of Probate Business'. This follows a consultation paper published by the Department for Constitutional Affairs. The proposals include the setting up of a dedicated website to contain information, guidance and forms, the simplification of the initial granting of probate by the replacement of the sworn oath with a signed statement and the ability to pay the necessary fees by credit or debit card.

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**To discuss any issues arising from this issue of Update please call the number below to speak to one of our advisers**

**01509  
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[www.moss-solicitors.co.uk](http://www.moss-solicitors.co.uk)

## TRUSTS LOSE CGT BENEFITS

### CAPITAL GAINS TAX (CGT) LAW ALLOWS CHARGEABLE GAINS TO BE DEFERRED IN SOME CIRCUMSTANCES THROUGH THE OPERATION OF 'HOLD-OVER RELIEF'.

Capital Gains Tax (CGT) law allows chargeable gains to be deferred in some circumstances through the operation of 'hold-over relief'. In essence, when the criteria for hold-over relief are met, the person to whom the asset in question has been transferred takes it at its CGT base cost, as opposed to the market value at the date of transfer. CGT is then not payable until the recipient realises the asset, when it is calculated on the original cost.

In recent years, the Government has toyed with this relief and with the tax position of trusts. From 10 December 2003, hold-over relief has not been available where an asset has been transferred to a trust in which the settlor or the settlor's spouse has retained an interest.

In the recent Finance Bill, provisions were included which will deny trustees the CGT exemption relating to a principal private residence where a property has been transferred into trust and hold-over relief claimed. Such arrangements have been used by those wishing to transfer a second home to a child for use as his or her main residence.

The legislation contains specific exemptions for arrangements involving disabled persons. In general, capital taxation is becoming a more complex area and to be effective, capital tax planning must be done with care and foresight.

The Government is also planning to correct the current anomaly by

which the tests for deciding residence for Income Tax and CGT differ somewhat and is consulting on the position regarding residents of the UK who are not domiciled here. Domicile is an important concept for both Inheritance Tax and Income Tax.

**We can advise you on the tax implications of foreign residence and domicile as well as attend to tax and estate planning and trust creation.**

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## CHECK YOUR SAVINGS ACCOUNTS!

With interest rates rising, people with savings will be looking forward to getting better returns on the money they have invested.

But how often do you check the rate of interest that is being paid on your accounts? Do not assume that just because the account you set up a year or two ago was offering a competitive rate of interest at the time, it still is. Banks and building societies have a history of reducing the rates of interest payable on accounts with very little notice to the account holders. Almost any

account that is more than a couple of years old is unlikely to be the best place for your savings now.

It is important to keep the rates of interest receivable on investment accounts under review so that funds can be moved when necessary. If the amounts involved are substantial, take advice as there can be tax implications. Taking sound advice on investments can ensure a competitive yield and minimise the tax payable.

If you have not checked the rate you are getting on your savings recently, do so. You may be in for an unpleasant surprise.

**Contact us if you would like to have your investments reviewed to ensure you get best value.**

With some savings accounts paying as little as 1% a year in interest, now is the time to check your rates.