

# Creating a Tax Efficient Estate - Wills, Trusts and Probate

## Your Questions Answered

### **Q: Is there a recommended age or a certain point in life when I should consider estate planning?**

**A:** This all depends on your circumstances. While there is no recommended age to start estate planning, certain life events mean it may be wise to consider what is going to happen to your estate and those you leave behind. These events include:

- Accumulating wealth and assets beyond the £325,000 inheritance tax nil-rate band.
- Getting married and having children.
- Buying a property or coming into possession of any other significant asset.

### **Q: Can I give away money before I die to reduce my overall inheritance tax bill?**

**A:** Yes, this is a common way of mitigating inheritance tax.

However, making a gift before you pass away does not guarantee that it will not incur inheritance tax. There are complex rules and exceptions to these rules that govern lifetime giving within 7 years of a person's death.

It is best to speak to seek advice before you make any gifts to properly understand how these rules apply to your situation.

### **Q: Can I pass down digital assets and cryptocurrencies, such as Bitcoin? How does this work?**

**A:** Yes, cryptocurrencies can be passed down in a will, just like any other asset.

However, there are security aspects to accessing cryptocurrencies, so we would always recommend creating a confidential schedule to your will, which lists passkeys and PINs to access your cryptocurrency wallets. This information should not be included in your will as, once probate is granted, your will becomes a public document. A side letter or letter of wishes setting out any

security information and instructions should be drafted and kept with your will but it will not be made public.

Cryptocurrencies should be specifically mentioned in your will as your executors may not know of, or know how to access, your cryptoassets. If they are not specifically mentioned then, unless information about your cryptoassets is kept with your will, your executors will not know anything about them. They will fall into the 'residue' of your estate but the assets may go unrealised. This would mean your beneficiaries miss out on a potentially high-value inheritance.

There are also complex issues around how cryptocurrencies are taxed, which require further legal consideration and advice.

**Q: When should I consider updating my will and should I update the existing will or do I need to have a new will made?**

**A:** We would always advise that you revisit your will every 5 years, even if you do not think it requires amendments.

Revisiting the will frequently helps you keep in mind any potential amendments which you would not normally have considered. There are times when the best thing to do will be to make a new will, such as:

- Getting married: any will you have in place is automatically revoked on the event of your marriage, unless it is made in contemplation of your marriage.
- Getting divorced: this does not revoke your will in the same way as marriage, instead your ex-partner is considered to have died on the date of the decree absolute. This means that they will be entitled to any benefit under your will in the event you die before your divorce is finalised.
- Selling or buying your home: if your existing will does not account for this, you will need to amend your will or create a new one.

Whether you should amend your existing will or you need an entirely new one depends on the scope of changes to be made. A codicil can be helpful for a minor amendment but if you wish to make significant changes it is often more cost-effective to draft a new will.

**Q: I don't think I'm going to suffer from dementia or Alzheimer's disease. Is it still worth making a power of attorney?**

**A:** Absolutely. Powers of attorney are intended to prepare for the unexpected.

While you may not expect to lose mental capacity, you could be involved in an unexpected situation like an accident and be left in a coma leaving you unable

to make decisions for yourself. Powers of attorney would enable your family to make decisions on your behalf about financial matters and the standard of healthcare you receive.

Without a power of attorney in place, your family would need to apply to the Court of Protection for permission to act on your behalf. This is a lengthy and expensive process which will require legal advice.

**Q: Can I control what my attorneys spend my money on?**

**A:** Yes, when you make a lasting power of attorney, you have the option to include ‘preferences’ and ‘instructions’.

Preferences are requests to your attorneys setting out what you would like them to do or not to do. Instructions are like directions, telling your attorneys that they shall, shall not, must or must not do something.

**Q: What happens to my debts when I pass away? Will my beneficiaries inherit them?**

**A:** When you pass away, your debts are still tied to your estate, but they will be paid using the assets you leave behind that make up your estate before it is distributed.

Your beneficiaries are not personally liable for these debts but your executors must ensure they are paid before distributing money to your beneficiaries. If they fail to do so your executors could be personally liable.

If there is a property with a mortgage outstanding in the estate, your beneficiaries can either try to transfer the mortgage in their own names, apply for a new mortgage to pay the outstanding amount, or the property will need to be sold.

**Q: How can I minimise the chance that my beneficiaries are going to argue about who gets what?**

**A:** Step one is always to make a will which records your wishes as fully and properly as possible. If you anticipate beneficiaries are going to argue or that one may want to challenge the will, we would always advise you speak to a private client solicitor.

A solicitor will be able to ensure that your will is as watertight as it can be, and that it is signed and witnessed correctly. This advice may cost a little more up front but it could save the legal fees and the stress of a challenge later so it is always worth the small upfront investment for the longer-term gain.

Some private client solicitors also have knowledge of how a will can be challenged, so we can help ensure your will is as challenge-proof as possible.

**Q: What happens if I'm married and our combined estates exceed the nil-rate band? Will we need to pay inheritance tax when the first spouse dies?**

**A:** There is a very helpful exemption to inheritance tax on assets passing between spouses and civil partners. This means that where the first spouse/civil partner dies and leaves their entire estate to the other spouse/civil partner, there is no inheritance tax to pay.

This also means that the surviving spouse/civil partner inherits the nil-rate band of the first and their nil-rate band will receive an uplift of the unused percentage, up to 100%.

When you consider the nil-rate band and the new residence nil-rate band, it means that potentially £1,000,000 of assets can be passed to the next generation by a married couple.

To take full advantage of these rules, inheritance tax advice is often needed. At Britton and Time, this process can be considered and the estate can be reviewed and structured efficiently during the will-writing process.



Elisabeth Squires is a highly experienced Private Client solicitor working at [WTT's](#) advisory partner law firm, Britton & Time.

Should you wish to speak with Elisabeth about any of the matters discussed above, please contact her using the details below.

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