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MAGAZINE

No fault divorce is here

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Page 04

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Investing in Property: Factors to Consider

If you are thinking about investing your money in property, there will be a lot to think about. The following are just a few factors to consider when buying investment properties.

Finances

It is important that you budget not only for the purchase price of the property, but also the costs associated with a property purchase, such as professional fees and disbursements. In particular, if the property will be an additional property or if you are purchasing in a company's name, you will be liable to pay the higher rate Stamp Duty Land Tax in England or Land Transaction Tax in Wales. If you are buying a property in England and you are considered a non-UK resident for stamp duty purposes, you will also be required to pay a surcharge of 2%.

If you are looking to purchase multiple properties in a single transaction, then you may be entitled to reliefs which can reduce the amount of tax you pay considerably.

Should you require a buy-to-let mortgage, you should factor in that lenders will often require a higher deposit compared to a standard mortgage. Buy-to-let mortgages tend to require a minimum deposit of 25% of the purchase price.

In addition, if the purchase is by a company, the lender may require that the directors of the company act as guarantors for the mortgage. This would mean that the directors would need to obtain independent legal advice before executing a personal guarantee.

There will of course be ongoing costs associated with certain types of properties, for example, flats will most likely be subject to service charges and ground rent. Houses may also be subject to service charges if there are shared areas on the estate.

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As a landlord, you will also have obligations to ensure that the gas and electrics at the property are regularly checked to ensure the safety of your tenants. If a property is being rented out, it must have a minimum EPC rating 'E', unless there is a valid exemption in place. If the property has an EPC rating of 'F' or 'G', you will need to carry out works to the property to improve the property's rating to 'E' or above.

Timescales

You are probably hoping for the transaction to complete as soon as possible, so that you can get on with renting out the property or renovating the property and then reselling it, sometimes known as 'flipping'. You should therefore ask the estate agents or seller to confirm what the extent of the chain is before you put in an offer, as long chains may lead to delays.

If you are intending to 'flip' the property, you should be aware that if you go on to sell the property to a buyer requiring a mortgage, some lenders will not lend on properties where the seller has owned it for less than 6 months.

What are you intending to do with the property?

If you are intending to renovate and 'flip' the property, you should consider what planning permission and building regulations consent will be required for the works. Not complying with planning permission or obtaining the required consents will likely cause issues when you come to sell the property.

If you are hoping to convert the property into a house in multiple occupation (HMO), to enable it to be occupied by multiple households, planning permission may be required if the area the property is situated, is subject to an Article 4 Direction. Furthermore, if the property is to be occupied by more than one household, depending upon the number of tenants and the local authority, a HMO licence may be required before you can rent it out.

If you are intending to rent out the property you should be aware that both houses and flats can be subject to covenants in the title documents, which may restrict what you can do with the property. Some properties may be subject to covenants restricting business use or restricting who can occupy the property, for example, it might be that only local residents can occupy the property. It is particularly important for your solicitor to check if there are any covenants limiting use or occupation if you are intending to use the property as a holiday let.

The long leasehold contract (also known as a lease) of a leasehold house or flat may also contain provisions requiring consent to be obtained from the freeholder (also known as the landlord). For any letting which the landlord can charge a fee for and, if you require a mortgage, conditions may be attached to the mortgage, restricting the type and length of any tenancy agreement.

Your solicitor should report to you on the property, title and the terms of any mortgage so that you can be satisfied that you are buying the right investment property.

No Fault Divorce is Here

How does no fault divorce work?

No fault divorce was campaigned for, for many years, by Resolution, the largest organisation of family law professionals in England and Wales. Many are in support of the movement, which seeks to remove the acrimony from the process. The welcome change in the law finally came into effect in April 2022.

You can no longer blame your spouse/civil partner for the breakdown of the marriage/civil partnership, nor do you have to prove that you have been separated for 2 years or more. You can now apply for a divorce by providing a simple statement of irretrievable breakdown. Previous fault based divorce and dissolution applications, for example, based on unreasonable behaviour or adultery, are no longer required or indeed, allowed.

We see this as a good thing, as previously, the reasons for the divorce or dissolution could be a distracting issue for couples trying to navigate financial and child arrangements.

Do both parties have to agree to a no fault divorce?

It is no longer possible to defend a divorce or dissolution of a civil partnership, save in circumstances where there is a dispute in respect of jurisdiction or the validity of a marriage or civil partnership. This means that an individual can make an application on their own, even if their spouse or civil partner does not necessarily agree with the divorce.

Some of the other changes introduced include the following:

- Joint applications can be made and couples can now apply together for a divorce or a dissolution of a civil partnership.

- There is a new time frame of six months. This is made up of a minimum period of twenty weeks from the application being issued until the conditional order can be applied for and a further six week period from the conditional order and when the order can be made final.

Can behaviour be taken into consideration when sorting out the finances or arrangements for the children?

When couples are going through a marriage or civil partnership breakdown, it is a highly emotive time. One party may blame the other if there has been adultery or if that party does not want to separate. One party may feel that the outcome of the financial settlement should reflect the fact that their spouse or civil partner has behaved badly. The reasons for the breakdown of the marriage or civil partnership very rarely have an impact on

the financial settlement. When considering the arrangements for children, the starting point is that it is important for the children to have a good relationship with both parents, unless there are clear reasons as to why this would not be safe or in their best interests.

An end to the blame game

You may have been reticent, previously, to issue proceedings, because you would have had to place blame on your spouse or civil partner. You may have found it difficult to cite particulars of unreasonable behaviour and you may have been concerned about how that would have affected the relationship with your spouse or civil partner and the wider family. With the introduction of no-fault divorce, you may now feel that separating from your spouse or civil partner will be less acrimonious. We are already seeing first hand that no fault divorce is helping to reduce conflict and is allowing couples to focus on important matters, such as sorting out the arrangements for the children or finances.

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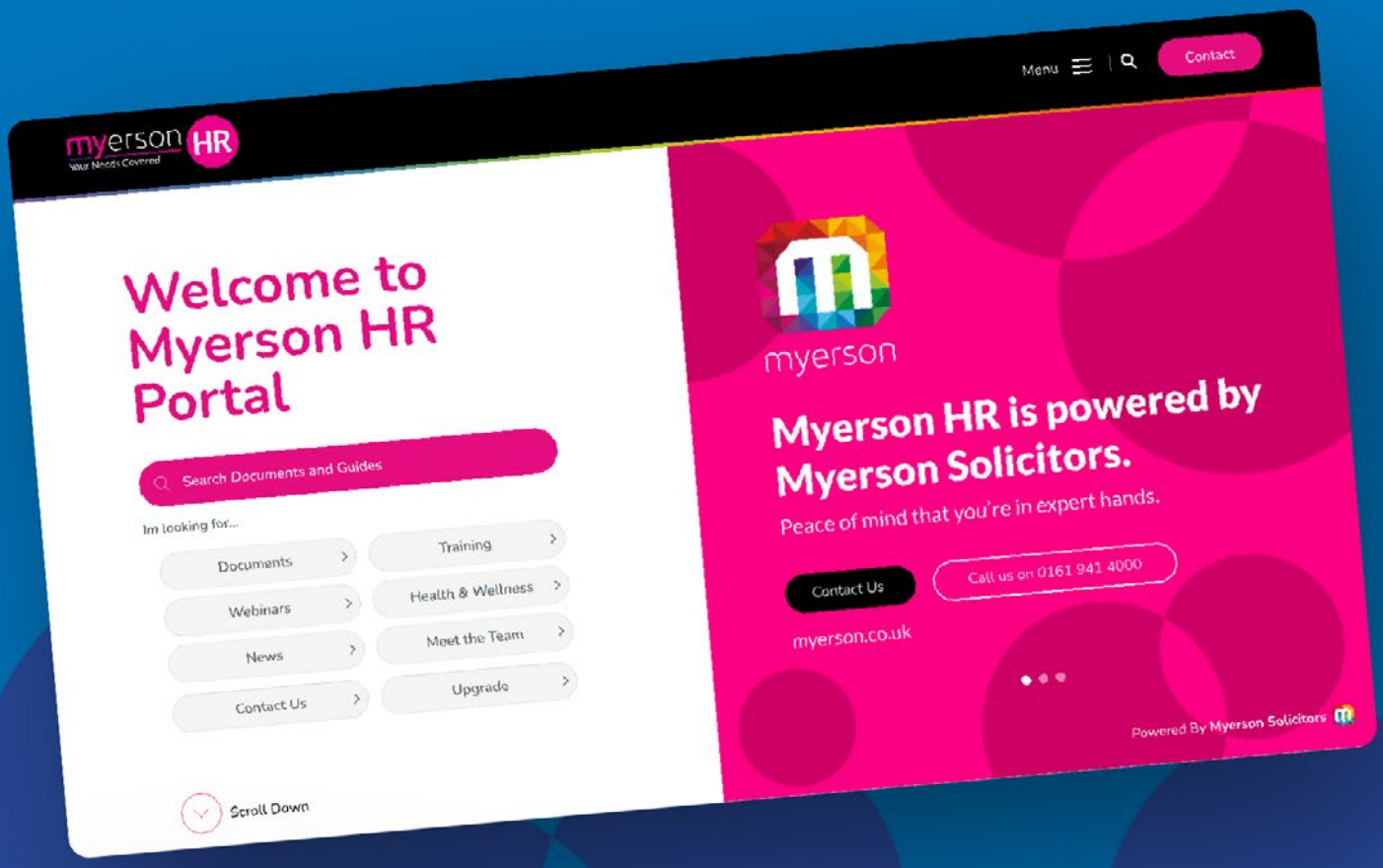

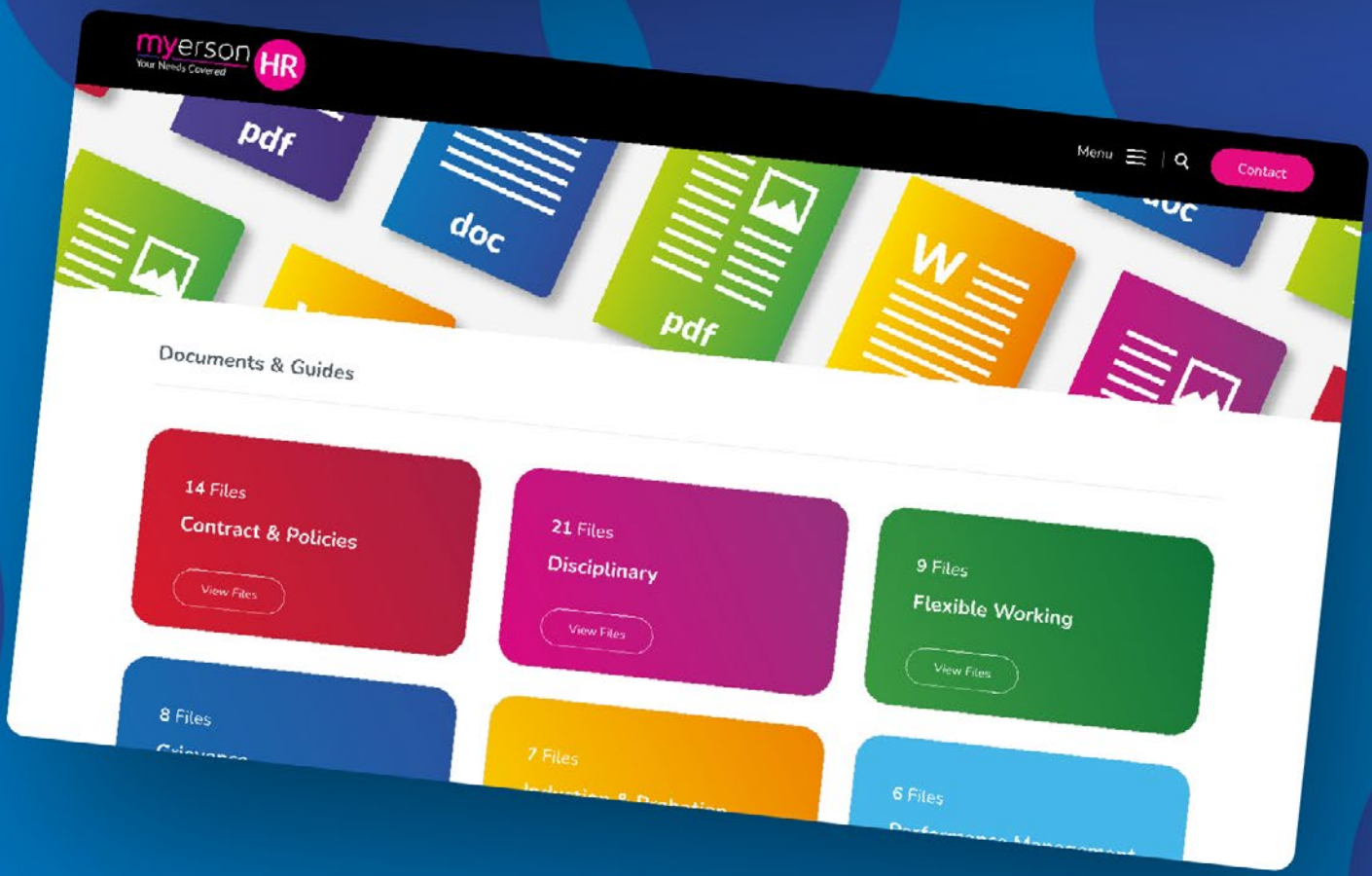

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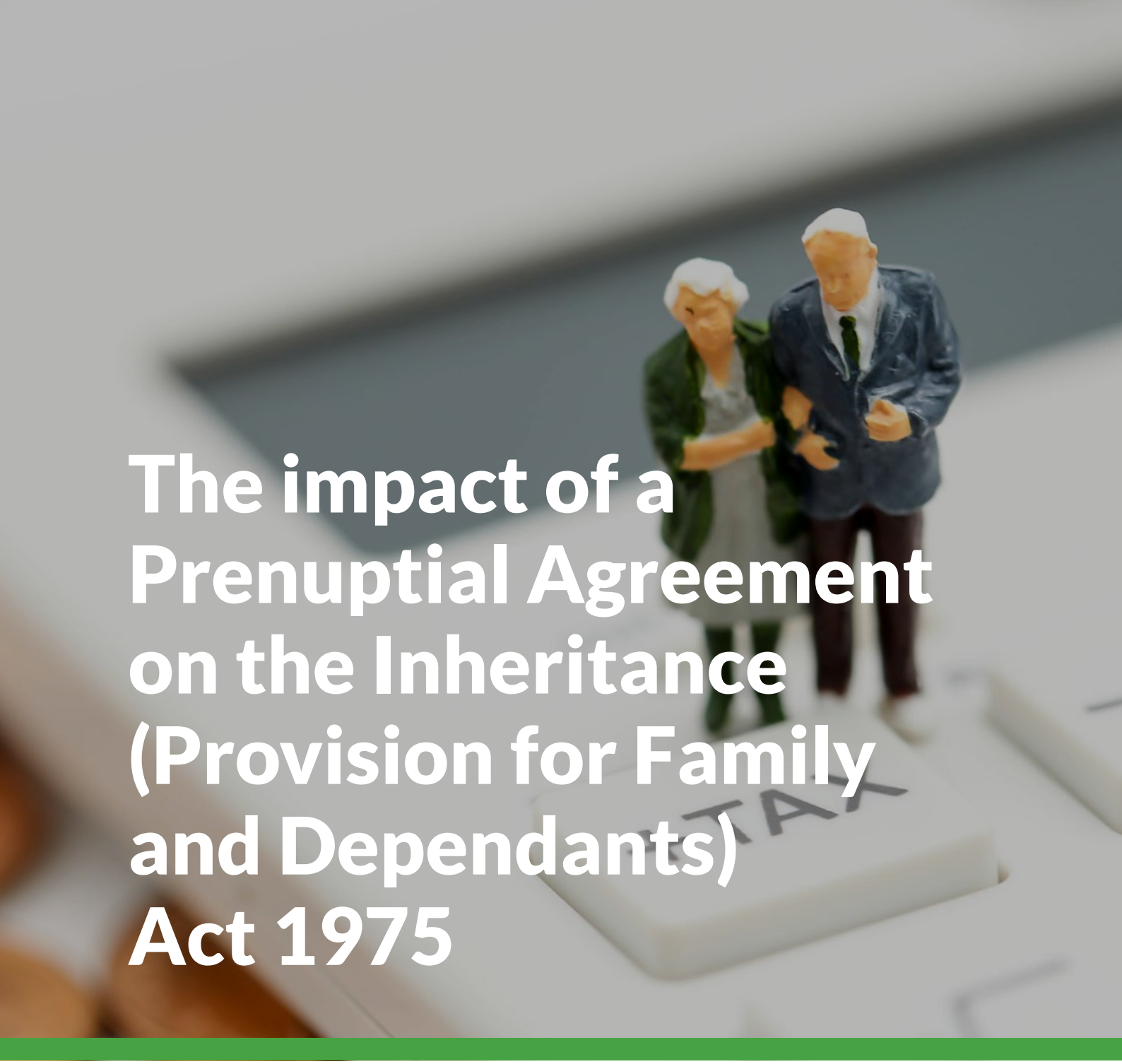

The impact of a Prenuptial Agreement on the Inheritance (Provision for Family and Dependants) Act 1975

A surviving spouse is one of the eligible applicants who can claim under the Inheritance (Provision for Family and Dependants) Act 1975. This is a claim where the applicant argues that the Will or intestacy rules fail to make reasonable financial provision for them. As part of the claim, the Court carries out an exercise called the *"divorce cross-check"*. This means the Court considers the provision the spouse would have received had the marriage ended in divorce, rather than death.

Whilst there is no *"ceiling"* or *"floor"* to the provision a spouse may receive under the Act, there is often an expectation that the starting point will be around 50% of the matrimonial assets (i.e. both the claimant's assets and the net estate). Equality will generally apply unless there is a "good reason" to depart from this. There are many different factors which can constitute a "good reason", including a Prenuptial Agreement.

What is a Prenuptial Agreement?

This is where a couple enter into an agreement prior to the marriage, setting out how they want their assets to be divided in the event of a divorce. An important point to note is that they are not legally binding in England and Wales. Although not legally binding, they can still be upheld by the Court if they have been drafted properly, fairly and do not discriminate towards children.

Effect on Death

There is a common belief that Prenuptial Agreements prevent claims being brought following a spouse's death, but this is not always the case in Inheritance Act claims. Instead, Prenuptial Agreements are just one of many issues the Court considers when deciding whether the Will or intestacy rules fails to make reasonable financial provision.

The question of whether reasonable financial provision has been made is objective, rather than subjective. This means the wishes of one or both of the parties about the distribution of their assets – whether expressed in a Will or a Prenuptial Agreement – are not always determinative.

The weight applied to Prenuptial Agreements is decided on a case-by-case basis. The Court generally considers the circumstances in which the agreement was entered into. For example, if the applicant can provide evidence that they signed the agreement due to duress (i.e. force or coercion), fraud or misrepresentation (i.e. something untrue that was said to induce a person to enter into an agreement), then it may be unenforceable. If this is the case, the agreement may be given no weight at all.

In contrast, there are cases where Prenuptial Agreements are given significant consideration. This is often where they are deemed to be fair, entered into freely and where both parties had an understanding of their implications. In these cases, the Court may find reasonable financial provision in what is set out in the agreement.

The impact of a Prenuptial Agreement can be uncertain. Given their importance, you should always take legal advice before entering into them.

If you have or are opposing an inheritance claim, or are concerned about the impact of a prenuptial agreement on such a claim, please contact our Contentious Trusts & Probate Solicitors.

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Donating to Charity in your Will

A recent episode of the television drama, Succession, showed cousin Greg lose his inheritance when his grandfather gave away his fortune to the charity, Greenpeace. Since this episode aired, 22,000 people have sought advice online about making donations in their Wills to Greenpeace. If you are thinking about making a gift to charity in your Will, you should be aware of the potential inheritance tax advantages of doing so. In particular, this article may affect the amount you are considering gifting to charity in your Will.

What are the inheritance tax advantages for leaving charitable gifts in my Will?

1. Gifts to charity in your Will are themselves free of inheritance tax. Therefore, you could help a worthy cause and reduce your inheritance tax bill at the same time.

2. If you leave 10% or more of your estate to charity, the remainder of your estate, which is chargeable to inheritance tax, could benefit from a reduced rate of 36% in inheritance tax (instead of 40%). This is relevant if your estate will be subject to inheritance tax. However, before you update your Will, you should seek the advice of a solicitor specialising in Wills to make sure you do not fall foul of the rules around charitable gifts.

How much should I leave to charity?

The charitable gift may include a legacy of cash, a specific item of property or a share of your estate.

When making a charitable gift, you may initially consider making a gift for a specific amount in your Will. However, it could be preferable to make a gift for an amount which is index linked, so the value of the gift remains the same as the rate of inflation.

If you do intend to leave 10% or more to charity, there is a risk that changes may take place between making your Will and your death. For example, your estate could change in size, there may be changes to the nil rate band and transferable nil rate band available, your domicile and the availability of other exemptions and reliefs. The amount left to charity in your Will could then either be higher/lower than you had intended. However, special wording can be included in your Will to help you ensure that a minimum and maximum amount is maintained.

An alternative would be to leave your estate to a discretionary trust whereby you can include charities as potential beneficiaries. By leaving a detailed letter of wishes, you can let your Trustees know that you would like them to exercise their discretion within 2 years of your death, to meet the 10% test and for your estate to benefit from the lower rate of inheritance tax. Although this is not legally binding on your Trustees, it means that you are likely to give the correct amount to charity to benefit from the rules.

Can I leave any instructions for how the money will be used by the charity?

Yes, you can. Your Will can include details of how you would like the charity to use the funds. However, this will not be legally binding and it may not always be possible to carry out your wishes at the time.

What if the charity changes its name or ceases to exist by the time I die?

If the charity changes its name or merges with another charity, your Will could make it clear that you would like the new charity to receive the gift. If your named charity has ceased to exist, the most common approach would be for your Executors to make the gift to a charity with a similar purpose. This would ensure that your wishes are still met and your estate can still benefit from the charitable tax exemptions.

The drafting of your Will is important to help you achieve the balance between benefiting charities and helping to reduce your inheritance tax liability. It is important to review the value of your estate and carry out the relevant calculations, to check if your intended beneficiaries will receive more or less than you had intended by including the charitable gifts. If you would like advice on gifting to charity and estate planning generally, please get in touch.

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