
CROMBIE WILKINSON SOLICITORS – THE NAME YOU CAN TRUST

NIL RATE BAND DISCRETIONARY TRUST WILLS – IMPORTANT CHANGES

You may have heard that changes in the law mean that a surviving spouse can claim the Nil Rate Band (NRB) of the first spouse to die (providing it has not been used) against their estate for Inheritance Tax purposes. This means that a surviving spouse, who has been left all the estate of their deceased spouse, can claim up to £600,000 (in the current tax year) worth of assets passing free of Inheritance Tax on their death.

The new rules will not change the effect of existing Wills. People who have, for example, a nil-rate band trust written into their Will do not have to take any action as a result of this measure.

Where someone dies after 9th October 2007 with a nil-rate band discretionary trust in their Will, an appointment of the trust assets in favour of the surviving spouse or civil partner (before the second anniversary of the death, but not within the three months immediately following the death) would normally be treated for IHT purposes as if the assets had simply been left to the surviving spouse or civil partner outright. Ending the trust in this way would mean that the nil-rate band was not used on the first death, and so the amount available for eventual transfer to the surviving spouse or civil partner would be increased accordingly.

However, by retaining the nil-rate band discretionary trust in your Will, you are afforded the fullest flexibility as to the treatment of your estate after your death. The advantages of containing such a trust in your Will are:

1. You still retain an element of control of those assets after your death. For example, if your spouse re-marries, those assets cannot pass to their new spouse, after their death but are protected for your children and grandchildren, as you would wish.
2. If any of your children, divorce or become bankrupt, again, their share of the trust are protected within the net of the discretionary trust, until such a time as the monies can be paid out to them.
3. If any of your children or grandchildren are spendthrift, they would not have their money to do as they wished but again, it would be protected within the trust to distribute to them as and when it was required, for what you would deem a good purpose, perhaps a deposit on a house.
4. Of great importance to many people, is the protection of assets against Nursing Home Fees. If the surviving spouse has to go into nursing or residential care, the assets in a discretionary trust are protected from any Local Authority calculation in respect of fees.

Generally, capital held in a Discretionary Trust is not treated as capital and is therefore effectively disregarded for local authority funding. Therefore any property and assets that you place in the Discretionary Trust will be protected for your children and grandchildren, even if the assets of the surviving spouse and used up in paying for their nursing home care.

5. If the assets in the Trust increase in value, their value will not increase the estate of the surviving spouse on their death. If you do not have a trust and those assets are in the survivor's estate this will mean that any growth in the value of those assets will be in the survivor's estate not the trust and may become subject to Inheritance Tax on their death. If it is possible or likely the growth will outstrip the NRB increases then it will probably be better for those assets to be in the Trust. (Note any growth may be subject to CGT but the rate of CGT is falling to 18% for gains made after 6/4/08).

Please contact the any member of the York Private Client Team for more information:

Sharon Richardson - s.richardson@crombiewilkinson.co.uk	(York)
Belinda Poulter - b.poulter@crombiewilkinson.co.uk	(York)
Richard Watson - r.watson@crombiewilkinson.co.uk	(York)
Darren Norgate - d.norgate@crombieiwlkinson.co.uk	(Selby)
Jennifer Bartram - j.bartram@crombieiwlkinson.co.uk	(Malton)

Or by telephone on 01904 624185 (York) 01757 708957 (Selby) 01653 600070 (Malton) or 01262 609585 (Bridlington)

Alternatively, please call in to any of our offices to arrange an appointment.

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