Wills Today
KENDAL WILLS
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# What's happening with Inheritance tax since the budget?

Alert readers may have noticed in the media, the Chancellor has announced changes to the rules on Inheritance tax, with particular reference to the "main residence".

So let's look firstly at the current position. Most of us in UK will have a nil rate band of £325,000. This is the amount you can leave in assets before Inheritance tax becomes due. There are exemptions. For example, a business may qualify for relief or if you make a gift to charity this is exempt. A husband and wife or other couple can leave a total of £650,000 between them.

While this might sound a lot, in the more prosperous regions of UK, particularly the south east, modest houses can often be worth more than this alone. This is before other assets are added into the pot!

From April 2017, an additional main residence allowance will be allowed if the deceased person's estate includes a residential property that has been the person's main residence. To qualify, it must be left to a direct dependent, such as a child or grandchild.

The extra allowance starts at £100,000 from April 2017 and rises each year to 2020 when it will be £175,000. It is personal and can be added to the standard allowance, so from April 2017, a deceased person owning their own main residence would have a total allowance of £425,000 rather than the current £325,000. It can also be applied to a partner, so a couple could have an extra £200,000 of allowance.

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## NEXT EDITION

Next edition we look at obtaining probate after a death

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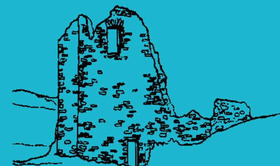

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# How do you value jewellery for probate purposes?

A valuation for probate purposes may be required upon the death of the owner of the jewellery to enable the HM Revenue and Customs to determine the amount of estate duty due. The values, are based on current market values ('Hammer Prices' likely to be achieved at Public Auction) at the date of death, and represent much lower values than for those required for an insurance valuation and are typically less descriptive.

A probate valuation should not be used to obtain insurance as the values ascribed have no relationship to the current new or secondhand replacement value.

Kendal Wills recommend Gordon Bramwell of Northern Valuations to undertake this type of work for you. He has been carrying out probate valuations for many years and is a Fellow of the Institute of Registered Valuers. Please note that all items are photographed which may assist in the distribution of items within families.

You can contact Gordon on 015395 67755.

# Why is the Banks v Goodfellow case important when making a Will?

**Although this case took place nearly 150 years ago, it is still important and relevant when writing a Will and it has influenced law making not just in the UK but throughout the world.**

John Banks was a draper by profession in Keswick, in the north Lake District. When he died, he owned 15 cottages in the area. Sadly, he had experienced a few problems in his life. At one point, he had been confined to a mental health institution as he suffered with delusions. In particular, he thought he was being pursued by a man called Featherstone Alexander. These delusions did not go away even when Mr Alexander died. He also suffered with epilepsy.

So why is the case important? John Banks made a Will on 2nd December 1863. Sadly, less than two years later he died. He left his whole estate to his niece Margaret. He had lived with his niece after the death of her mother. A couple of years later, Margaret died.

As Margaret was only aged 20, she was considered a "minor" and under the law of the time, she died intestate, and her estate went to her half-brother. He wasn't a close relative of John Banks so his family were not best pleased.

With this in mind, the son of John Banks half-brother, brought proceedings contesting the Will, on the grounds of lack of testamentary capacity. (In other words, that he didn't know what he was doing).

It was found by the court that the Will was valid, and that John Bank's delusions had not affected his decision making, when making the Will. The case did however, set up some important principles when writing a Will, known as the "golden rule", for establishing whether or not the testator writing the Will has mental capacity.

***The three principles identified are:***

- The person writing the Will must understand the nature of the Will and its effect.
- They must also understand what property they are disposing in the Will.
- Be aware of any dependents they would normally be expected to provide for in the Will and free from any delusion of the mind that would cause the testator not to want to benefit such people.

This case is still important, although today the 2005 Mental Capacity Act has added further guidance in this area.



# Property Trusts-Do you want to leave a dispute after your death?

**Most of us will have come across the situation where somebody owns a house in their sole name. They have children who they would like to inherit the house when they die. We could call these children the beneficiaries.**

However, the owner has a partner or spouse living in the property with them. Typically, if they are married, this will be a second marriage, and the children will not be the children of the surviving partner.

If the house is sold when the owner dies, the surviving partner will have nowhere to live. This is not a good situation and with this in mind, they may be able to claim against the estate of the deceased partner, especially if they were financially dependent on them. The likelihood of a successful claim will also increase if the couple have been together for a good length of time and also if they were married.

At best this could be messy and costly with no clear winners. We have a potential dispute between the surviving partner and the beneficiaries.

If the house owner leaves the house to the partner in full, they may re-marry and even worse, the children could lose their inheritance.

With these points in mind, it is not unusual to see "Property Trusts" created in Wills which give a partner the right to occupy a house as long as required, without paying any rent, provided they maintain it. For some cases, this will provide a solution to the situation described, where after the death of the surviving partner, the house will revert back to the children of the owner, or their children (the grandchildren of the owner).

However, as we can see, it may mean that the children of the owner never actually inherit, especially if the partner is younger than their parent. In fact in some cases, the partner, may be younger than the children.

A concern that we often see when drafting the Will is the re-marriage of the partner. Will they be able to live in the property with their new partner? Clearly, many of us would not want this position.

It is not unheard of to find clauses in a Will stating that the occupant of the property should not re-marry or even co-habit, and continue to live in the property. To be realistic, such clauses may be difficult for the family to enforce, and could lead to a major legal dispute. An alternative, also used is to set a time limit, allowing the partner to remain in the house for a clear period of time, e.g. five years. This may be a better option to deal with such complex family situations. The partner could also be left a gift in the Will, when the house is sold, to help them with the cost of finding somewhere else to live.

***Mr Rodman was so easy to talk to, very understanding and I felt I had all the time I needed to discuss with him making my Will, I never felt rushed. I now have a Will and trust in place which has given me peace of mind.***

Mrs J F Kendal

*continued from page 1*

**Key points**

- You need to own your main residence at the time of death. If you sell your house and move into a rented flat, you would not qualify.
- If an estate is worth over £2million a reduction applies. For every £2 over the £2million the reduction is £1. So if you have more than £2.2million based on the £100,000 additional allowance, the extra allowance will be lost.
- If you die before April 2017 you will not have the additional allowance.
- It is helpful to have an idea of the value of all your assets. You can then add them all up. Many of us just don't know what we are actually worth. Having done this, you will have a good idea of the liability.
- Since 2007 spouses and civil partners have been able to claim unused nil rate band allowance from a deceased partner. This will apply with the new relief also.
- If you have a liability, it is a good idea to seek professional advice to see if this can be reduced. At Kendal Wills we work with some experienced Independent Financial Advisers who can assist in this area.

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*Ask us your legal questions and if we don't know the answer we will find out!*

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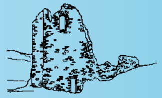

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