IS IT RIGHT TO ALWAYS BE "FAIR" TO ALL CHILDREN WHEN WRITING YOUR WILL?

Reading in the Daily Telegraph recently, it gave details of the Will of the mother of Chris Evans, who sadly passed away recently, leaving an estate of around £130,000. Mrs Evans had left her estate to her children equally, including Chris, who must be worth many millions. Some might say, other family members might be more deserving, or in need of that money. Others may say she has done the right thing.

A consideration here is that a wealthier sibling, if they wish, may choose to give their share away to a needier brother or sister. Others when making a Will may take a more biblical approach and say, if a son or daughter hasn't looked after their money well, they don't deserve more, so it is wiser to benefit a more successful brother or sister instead. There can also be the "benefit" problem. If a son or daughter is in receipt of state benefits, and they receive a large inheritance, their benefits may be affected, or even removed, until the inheritance is spent. Not a great result. One option in such cases, is to leave assets "in trust" for a beneficiary, with trustees to look after the money, so they can't access it themselves.

We also see problems when one son or daughter has looked after an elderly parent, in their old age or simply lives near to them, and is able to assist. The parent can often view that the other child or children do nothing and consequently, they don't want to benefit them in their Will. This situation can be amplified as they start to lose mental capacity, and become more dependent on family for everything. They can easily forget the past, and only remember very recent events.

Step children can also create complications. Should they be treated the same as children of the full blood? You might need to know more about the family and how they interact to answer this one.

In conclusion, when writing your Will, I would always try to be "fair", unless there is very good reason not to be.

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ARE YOU A TRUSTEE IN A WILL AND UNSURE OF YOUR OBLIGATIONS?

If ever you read a Will, it is quite common for it to say something like "I leave my residual estate to my son John; but if he should fail to survive me the gift should be shared equally between his children". Well, a problem that can arise, is that the children may still be very young, and far too young to inherit a large sum of money.

While this seems very fair, it can mean money or investments have to be held by the trustees for a long time, before the children can inherit. This may be at age eighteen or an older age may be stipulated e.g. 25. For example if a child is two and they can inherit at eighteen this would be sixteen years.

A similar situation can arise where money or investments have to be held for a beneficiary with learning difficulties. In many Wills, the Executors are also appointed as Trustees. So if money has to be held for a child or disabled person for example, the trustees have to take care of the money until it is required. This can be a big responsibility. Well for example, you might say, it could go in a building society account... **(Continued on pg 2)**

IN THIS ISSUE:

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(Pg 1 continued) ...While the money should be reasonably safe, interest rates are low currently, (typically 1% at best) so there is a real danger the value of the money could be eroded with the cost of living. This can mean in sixteen years' time, the money won't buy anything like as much as it would today.

For large amounts you would probably want to spread the money between several accounts with different institutions, like eggs in baskets. The financial services compensation scheme covers amounts up to £85,000 with one company.

The trustees have a duty of care to the beneficiaries to act in their best interest. The beneficiaries are the people receiving the money, typically young people.

The trustees, like executors, should always keep records. In some cases interest received must be declared to the Inland Revenue. The Government lay down rules in the Trustee Act 2000. This act states you should seek professional advice. For example, this could be with an Independent Financial Adviser.

In conclusion therefore, if you find yourself in this position of being a trustee, having to hold investments, it would be well worth studying the act, which is easy to find on the internet.

WHAT HAPPENS WHEN A SOLE DIRECTOR OF A LIMITED COMPANY DIES?

There are around 5.7 million small limited companies operating in the UK. These businesses employ over 16 million people. Of the limited companies, in 2017, 60% are "Sole Proprietorships" meaning they employ just one person. That is around 3.4 million people. Most of us will know someone like this.

I was told recently by an accountant, about an owner of a small limited company, who died unexpectedly. He had died without a Will. There were no other directors in the business.

Very quickly, practical problems emerged. As you would expect, the bank were told of the death, and they quickly closed the company bank account. This now meant that cheques and other payments could not be paid in to the bank. Furthermore, the funds in the company bank account couldn't be released. So what should happen in a case like this?

Firstly, it is always helpful to have a Will. You would normally, appoint executors to deal with your affairs, after your death, so this alone is very helpful. If there is no Will as here, the personal representatives of the deceased have to take responsibility.

It's also helpful to have a separate person as Company Secretary in the business. The Company Secretary can appoint a new director to run the company.

On a similar point, it is also useful to have a second signatory on the company bank account in case the director cannot act.

If there is no separate Company Secretary, the company articles would need to be checked to see if they allow the personal representatives to appoint a new director.

From a practical point of view, such questions may take time to sort out. This can make a death even more painful and stressful for close family. It can also cause problems for past customers of the business, who may be quick to go elsewhere. Ultimately, this can make the business less saleable.

In conclusion, it is worth giving thought to these emergencies, before they arise by seeking professional advice.

To find out more please call us on **01539 728020** or **01524 901000**

"CAN YOU AVOID PAYING CARE FEES?"

The problem of who pays for long term care isn't going to go away. This can mean care in your own home, or care in rest home or nursing home.

With an ageing population the potential cost of providing care can only increase. The situation is very simple, those who can pay, those who can't don't, and there lies the problem. The Actual care you receive can be exactly the same, if you are paying or if you are not. If you have savings, you may be able to afford a higher quality of care. Having money can mean choices, as it always has, which a poor person won't necessarily have.

You don't need to be particularly wealthy before you will be expected to pay for your care. If you have assets of £23,000 this is enough. If you give money or assets away, this can be seen as "Deliberate Deprivation" where a person deliberately reduces their assets to avoid paying. In this type of case if assets have been given to family members, they may be expected to pay for the care of an elderly relative. The frustration is all through life, we are encouraged to save.

This problem is particularly bad where a widow or widower owns all the family assets, the house, savings etc. If the person has no savings, the local authority can even put a legal charge on the house, like a mortgage, to recover the cost of care provided. If the elderly person reaches the stage where they no longer can manage at home, and need to go into care, the house is sold and the local authority recovers their loan. The balance of the house sale proceeds must then be used to fund the care home, until the figure of £23,000 is reached. Most readers will be aware of the cost of such care homes. £1,000 per week is not unusual. This can mean a families future inheritance is wiped out.

While most houses are owned "jointly" like a joint bank account, it doesn't always have to be that way. A couple can own a house "tenants in common" which can offer a greater degree of protection. This means they can each own a share. Typically, these shares will be 50% or half each, although you can have unequal shares. The change in ownership is known as a "Severance of Tenancy".

Having severed the tenancy, you can leave your share of the house to your family in your Will. Many people choose to say in their Will, they would like their partner to be able to stay in the house, after their death, as long as required. The difference here is that the partner will only own half of the house. This is important, for example if the house is eventually sold to pay for care. Furthermore, a local authority will not generally try to apply a legal charge to a house, if is not fully owned by the occupant.

TESTIMONIAL...

"My wife and I asked Paul to assist us in creating our Wills. Perhaps not the most straight forward of Wills. I am a company director and landlord and my wife and I have children from a previous marriage.

However, Paul guided us through the process in a professional and thoughtful manner. His understanding of real life situations and his vast experience allowed us to create the papers we needed. I would certainly recommend Paul Rodman from Kendal Wills to family friends and businesses."

Steve & Diane, Bare, Morecambe.