

WILLS AND NIL RATE BAND DISCRETIONARY TRUSTS

Factsheet



These Wills are specifically for a couple (married or civil partnership) who wish to undertake Inheritance Tax (“IHT”) planning. They work by leaving a legacy of an amount of up to the value of the available nil-rate band (“NRB”), which is currently £325,000, into a Discretionary Trust on the first death.

Basically, IHT is charged at 40% on the value of a person’s estate over and above the NRB. Typically, married couples or civil partners wish to leave their Estates to each other on the death of the first of them to pass away and the introduction of the transferrable nil-rate band (“TNRB”) in October 2007 means that a couple can now benefit from two nil-rate bands on the death of the survivor.

Nevertheless, despite the TRNB, such Wills may still be worthwhile considering. Here’s why:

1. Changes in value of the estate

The NRB will remain unchanged until April 2020 but asset values could well increase in the meantime. Moreover, if there is a possibility of there being a large gap between the two deaths then asset values could well increase significantly more than the NRB. If some of the matrimonial assets were held in a discretionary trust set up by Will, the growth in value of would be taxed at a significantly lower rate than if it been held in the survivor’s estate.

2. Second Marriages (similar rules apply to second Civil Partnerships)

If yours is a second marriage and either or both spouses were widowed before the marriage, then use of such Wills could mean that, between you, you could get up to four NRBs to set against the value of your joint estate. Each additional NRB used will avoid a Legacy to the Government of up to £130,000!

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It is often difficult for couples to reduce their Estates by giving assets away because they would need those assets to provide them with the income necessary to maintain their standards of living, or because the majority of the value of the Estate is tied up in the home. However, use of such Wills can get round this. The surviving spouse would be a potential Beneficiary of the Discretionary Trust and so the assets held by the Trust would still be available for that person to assist in maintenance of that spouse’s standard of living. These Wills offer a further advantage in that they also protect the first £325,000 of the first spouse’s estate from being spent in residential care fees in the event that the surviving spouse needs to go into a rest or nursing home.