



Leaving gifts to children in your Will

Legal services for life and for business

GIFTS TO CHILDREN

As a parent with young children, it is absolutely essential for you to make the right kind of provision for your children in your Will. There are two main options which are outright gifts or the provision of a trust structure.

OUTRIGHT GIFTS

An outright gift leaves assets to your children without restriction. If the child is under 18, then they will not be able to give valid receipt for the gift until they reach 18. Therefore the money is held by the executors of your Will as trustees until such time.

The disadvantage of an outright gift is that it offers very little protection from the legacy being squandered if received too young, or being paid over, without any scope for retaining the money in trust to provide protection (if there is good reason for keeping the money in a trust structure).

TRUST STRUCTURES

Any funds placed into trust will fall within the Relevant Property regime and the amount in the trust over the Nil Rate Band (currently £325,000) will suffer additional Inheritance Tax charges to that charged at 40% on your estate above your tax free threshold.

There will also be 10-yearly charges and exit charges (both at a maximum of 6%) whenever funds are distributed from the trust. In order to avoid the trust falling within the Relevant Property regime you can place the funds to be held for your children in the following trusts:

Bereaved Minor's Trust (BMT)

Your children must inherit under your Will, and under intestacy rules, at the age of 18 years in order to ensure there are no additional Inheritance Tax charges. Whilst there is an advantage to monies being left to your children in this way, most parents feel that 18 is too young for their children to receive what might be a substantial lump sum and the money may not be put to good use.

18 – 25 Trust

If you are unhappy about your children inheriting your estate at 18 years the trust can hold their inheritance for them up until they reach 25 years at a reduced additional charge to Inheritance Tax. Under this type of trust the Relevant Property regime does not apply until the child turns 18 years. Provided the funds vest in the child at 25 years there will be no 10 yearly charge as the funds are only within the regime for 7 years and also the exit charge will be at a maximum of 4.2% (7/10th of 6%).

Immediate Post-Death Interest (IPDI)

Alternatively, instead of fixing an age, you can give your children an immediate right to the income from the trust. This means that at 18 they will receive the income that the trust produces and will receive the capital following the trustees exercise of their discretion. For tax purposes your children will be treated as owning the underlying capital of their share and, in the event of their death, the value of their share will be included in their estate for Inheritance Tax purposes.

Discretionary Trust

The other alternative is to leave your residuary estate on Discretionary Trust which will fall within the Relevant Property regime detailed above, unless wound up within two years of death, when none of the above tax charges will apply.

The Discretionary Trust is therefore a good 'wait and see' vehicle to assess the circumstances of the beneficiaries and the tax laws at that time.

A Discretionary Trust gives your trustees the absolute discretion and flexibility to apply trust money to a class of beneficiaries. Here the trustees have the power to forward the capital and income from the trust at their entire discretion to any one or more of the beneficiaries (which would include your children and your other descendants) as and when they deem it appropriate.

The main advantage of a Discretionary Trust is that it protects the assets held within the trust from early distribution to the children. It also allows the trustees to give your children the assets held in the trust when they think it appropriate to do so, rather than giving them outright, which could result in assets being squandered or falling into the hands of a third party.

The other benefit is that because a Discretionary Trust is extremely flexible, it might help you successfully pass your assets to subsequent

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generations of your family in an Inheritance Tax-efficient way.

With this option, a letter of wishes can be prepared giving your trustees some guidance on how to administer the trust. For example, you could give guidance on when you would like your children to inherit various assets and which assets you would like them to specifically have.

Please see our Discretionary Trust factsheets which set out this option in more detail or for more information, please contact Brachers' private client team.

"Clearly understood what the aims were, showed empathy, guidance and anticipatory behaviours."

CLIENT COMMENT
