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INTRODUCTION

The saying goes that we can avoid everything except death and taxes. Maybe probate has the unique distinction of dealing with both these activities. We cannot avoid death but we can avoid taxes.

The proper regulation of one's estate can certainly minimise inheritance tax and maybe get rid of it entirely.

Life becomes more complicated by the day but it is possible without running up excessive legal fees to prepare a valid will and as an executor to undertake probate of someone's estate without legal help.

My definition of probate is very high-class administration. We are capable of doing it if we follow the checklists assiduously and keep a note of everything we do. If every piece of paper is accounted for and filed properly then probate should not be too difficult.

With the advent of computers, photocopiers, faxes and emails and the Internet these things are more easily undertaken by the organised amateur.

The minimum you will need is

1. Telephone
2. Computer
3. Somewhere to file all the letters.

I have attempted to take you through a typical probate transaction and to supply you with checklists, addresses, telephone numbers, and website addresses and draft letters.

I have tried to keep the text uncluttered by keeping the non-essential items to the appendixes. There will be notes in the text where these things can be found.

I purchased my first house by using a book although I did have the advantage of working in the legal department of a local authority. I knew nothing about practical conveyancing. It was a famous consumer association guide and I still have that copy on my shelves even though it was about 33 years ago. I am a great believer in *'how to books'*. They can at the very least take out this mystique of what the professionals try to wrap up as being very complicated indeed.

Wills and probate is not brain surgery but you have to follow a procedure precisely to get it right. You can save thousands in legal fees, which incidentally is doing me out of a job, but I will try and live with the rejection.

WRITING YOUR OWN WILL

Everyone over the age of 18 should make a will. Although in the public's view making a will is a straightforward matter it can have devastating effect if not written and executed properly and also if there is no will.

The safest advice is to always get a competent person to draw up and have a will executed for you. You can then rest assured that your wishes will be carried out in the event of your death.

Also if you execute it whilst you are fit and well there is less likelihood of it being overturned by beneficiaries claiming that you were not competent to do it.

If you are in any doubt about your own ability to draw up and execute a will you should get a solicitor to do it for you. At the very least your beneficiaries will be able to sue the solicitor in the event of him or her being incompetent or your beneficiaries

missing out because of negligence. If you draw up a poor will they will only be able to regret for the rest of their lives that you had not taken competent legal advice which comes relatively cheaply for a straightforward will.

I often claim that I would happily pay the solicitor's fee for a will to be drawn up were I to be the beneficiary. So far I have not been called upon to pay up on that promise as no one has indicated that they want to make me a beneficiary.

As a practising probate lawyer I see a lot of heartache amongst families when they think the will has not been drawn up properly or they think they can overturn the will because the testator was not mentally capable.

Unfortunately the chance of inheriting does not bring out the best in people. Also families in those circumstances do not seem to enjoy themselves more than when they are falling out over money. We all believe that it would not happen in our family as we are not so petty and mercenary but in my experience no one is exempt.

We would much rather total strangers get part of the estate than let “undeserving” members of our own family.

Occasionally I get well meaning ‘know alls’ who say I am not paying your fees as everything will go to the wife when I die. That is partially true but intestacy trusts in favour of the children may arise which can tear apart a family. I suppose this boast is to prove how clever the speaker is.

I counter if I am in a difficult mood by saying: yes you deprive me of my fee but you are taking a risk that in the event of your joint death and intestacy your sister in law will inherit your estate. I have no idea whether the speaker has a sister in law but it

usually encourages them to dip into their wallet to pay my fee for a properly drawn up Will.

We all have someone to whom we do not wish to leave our estate even if it's only the taxman. Or, on intestacy, ultimately the State. If you leave it to the cats' home provided it is a charity you save the tax and keep it out of the Chancellor's hands. A satisfying outcome

WHY MAKE A WILL?

If you do not have a will then your estate will be distributed in accordance with the rules of intestacy. Intestacy means when there is no will. A testator is the maker of a will.

Apart from limited circumstances you have freedom to leave your estate to whomever you like unlike some other legal systems such as in France.

You are entitled to go to the stationers and use a will form. The only problem with that is that it may work but any mistake in execution will invalidate your wishes.

Everyone should make a will and think about updating it regularly as your circumstances change.