

# PersonalLaw

the latest news from one of Yorkshire's leading law firms

## Hello & welcome

Welcome to the first issue of Gordons' personal law newsletter.

This newsletter aims to bring you up to date information on the current issues that may affect wealth management planning for you, your family and your business.

We would also like to share some of the more personal stories about what our team has been up to so you can get to know us better.

In this first issue Alison Wright discusses the transferable Nil Rate Band and the implications on Inheritance Tax planning and there is also an article covering Lasting Powers of Attorney which replaced the Enduring Powers of Attorney you may be familiar with.

You can also find out about a memorable client evening we held earlier in the year at the Leeds College of Music of which Andrew Linden, one of our Partners, is chair of the Board of Governors.

We do hope that you will enjoy this newsletter and we would welcome any comments or suggestions that you have for future issues.



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## The transferable nil rate band not the solution for all?

The Nil Rate Band is the amount (which usually increases each tax year) that a person can give away before becoming liable to Inheritance Tax.



**Alison Wright**

The Government's Pre-Budget report, announced in October 2007, introduced the concept of the transferable Nil Rate Band, which made it

possible for spouses and civil partners to transfer their unused Nil Rate Band, either in whole or in part, to the survivor of the two of them if it was not used on the death of the first. This meant, on the second death of the couple, his/her estate could claim up to two Nil Rate Band exemptions and therefore save Inheritance Tax.

Before October 2007, the only way to claim two exemptions and still benefit your spouse was to create a Discretionary Trust in your Will.

We have produced a leaflet entitled 'Inheritance Tax Efficient Wills' which outlines, in detail, how the transferable Nil Rate Band works and why a Discretionary Trust was used prior to the change in legislation. This is available on our website ([www.gordonsllp.com/services/personal-law](http://www.gordonsllp.com/services/personal-law)) or we can send a copy to you if more convenient.

Obviously we all want to minimise the amount of Inheritance Tax payable on death by maximising the use of exemptions. Usually a married couple make Wills, leaving each other all (or the vast majority) of their property on the first death hoping to ensure the

widow/er has enough to live on. If this course of action is followed, there will be no Inheritance Tax payable on the first death and the second spouse's estate can then claim two exemptions; their own Nil Rate Band and also that of their deceased spouse. Considered in isolation, this would be the best course of Inheritance Tax planning;

**Unmarried couples cannot claim the transferable Nil Rate Band**

the surviving spouse is catered for and the second spouse's estate can claim two Nil Rate Bands. However, there are circumstances where this type of planning is not sufficient and why the 'old fashioned' planning using a Discretionary Trust in your Wills might be more appropriate:

- Nursing Home Fees - A Discretionary Trust on the first death of a couple can protect assets from local authority charges. This means you can ensure that assets are sheltered from nursing home fees.
- If a married couple are concerned that on the death of the first spouse, the survivor may re-marry and leave everything to the new spouse, therefore denying any children from the first marriage their inheritance,

a Discretionary Trust can protect the children's position.

- If discretionary beneficiaries suffer a divorce or bankruptcy, a Court cannot put a charge over the assets held in the Trust.
- Growth in assets can be split between the Trust and the surviving spouse's estate. This is important if house prices start to rise again. With a trust, the growth of the surviving spouse's estate can be restricted, thereby restricting the spouse's Inheritance Tax liability.
- Unmarried couples cannot claim the transferable Nil Rate Band, so they would benefit from the Inheritance Tax saving the Discretionary Trust route offers.
- The transferable Nil Rate Band will not be automatically deducted on the second spouse's death, it has to be claimed within 2 years by the Executors of the estate and a certain amount of paperwork has to be submitted in order to claim it.

The transferable Nil Rate Band route may seem like an ideal solution to begin with but it is not necessarily the solution for all circumstances, careful forward planning also needs to be taken into consideration.

**For more information contact Alison Wright on 0113 227 0260 [alison.wright@gordonsllp.com](mailto:alison.wright@gordonsllp.com).**

# Lasting Powers of Attorney

By Frances Davies

Many clients will be familiar with Enduring Powers of Attorney. These have been with us since 1986 but, as of the end of September 2007, it is no longer possible to create a new Enduring Power of Attorney.

An Enduring Power of Attorney (EPA) allowed you to choose one or more people to look after your financial affairs in the event that you are no longer mentally capable of doing so yourself. Any EPAs which already exist will remain valid.

EPAs have now been replaced by Lasting Powers of Attorney (LPA). There are two types of LPA which you can make - a Property and Affairs LPA and a Personal Welfare LPA; you can select different attorneys for each.

Neither document can be used before it has been registered at the Public Guardianship Office and it is necessary to notify up to five people of your choosing that the Power of Attorney has been created. This is intended as a safeguard to reduce the possibility of vulnerable people being influenced to sign documents which may not accord with their wishes.

It is possible to include restrictions within the LPAs for example you may choose to limit an LPA to certain property or state that it should only be used if a doctor has certified that your mental health is beginning to be impaired.

It is also possible to include guidance for your attorney and this can be particularly useful if you have strong religious or moral views on a particular matter. Guidance is not binding whereas any restrictions would be.

You can choose to appoint one or more attorneys. If you appoint more than one then you have a choice as to how they should act. One option is to appoint them jointly which means they must always act unanimously.

The alternative is to appoint them 'together and independently'; this

means they can each act separately. One significant change to EPAs is that the LPAs must be signed by the Donor (the person making the power of attorney) in the presence of a certificate provider; this is a person who has known you for at least 2 years or is a professional. That person must discuss the effects of the LPA with you on your own so not even (or maybe especially) a husband or wife is allowed to be present.

## Who needs an LPA?

The short answer is that we all do.

Like it or not, people are now living longer and to a greater or lesser degree it is likely that our mental capacity will decrease with age. There is a fairly high possibility that if you live long enough there may come a time when you are unable to make everyday decisions about your health, welfare, finances and property.

Loss of mental capacity is not always a prolonged process. It can happen as a result of an accident whether the circumstances are that this loss is temporary or permanent.

If you do lack mental capacity at some time in the future and you do not have a valid LPA then the Court of Protection will appoint a deputy to make those decisions for you. There is likely to be a time delay with such an appointment and the deputy may or may not be the person you would have chosen.

For more information contact Frances Davies

# LCM jazz concert



Earlier this year Gordons sponsored an evening of music by world renowned jazz artists John Etheridge and Christian Garrick at the Leeds College of Music.



Andrew Linden, a partner in the personal law team is also chair of the college's board of governors "As a partner at Gordons, we are proud to support a progressive educational establishment that is promoting the city and its musical talent. Many of my colleagues and the firm's clients share in a love of music,

so supporting the college is an ideal activity that allows us to combine business with pleasure." Guitarist John and violinist Chris entertained the sell-out concert interpreting jazz, folk, world and rock music which everyone enjoyed tremendously, from the extreme jazz fans to those that aren't exposed or too familiar with the music style, making the night a great success.

## Charity seminars

Alison Wright, a Legal Executive in our Personal law team, has been delivering seminars to local and national charities and delivering seminars entitled 'Planning for the Future, Disability Trusts in Wills' delivered to parents and carers of family members with learning disabilities. Alison has hosted seminars for Mencap in Leeds, Bradford and

Shipley; Down Syndrome Support Group Bradford; Plan Wakefield and Inclusion North, talking to parents and carers of people with learning disabilities and informing them of the issues they should address in their Wills.

A further round of seminars have been booked for the Autumn.



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