

equity

wealth management and family update



There is more media interest than ever in the importance of estate planning, as Philippa Lewis explains.

It seems to have become quite a fixation for the BBC which (as reported in our spring edition of equity) has brought the desirability of putting in place a will to the forefront of the public's mind in programmes such as 'The One Show' and 'Legacy'.

It is, however, not only vitally important for most adults to make a will, but also to ensure that the will is drafted correctly in order that their assets will be dealt with as they wish after their death.

Will writing is not a simple matter. The interaction of the law of succession, family law, property law and tax law is very complex. If a will is not drafted with great care and with full knowledge of not just the law but also

of the family background, this can give rise to unexpected and unwanted results. These can include increased tax liability or the wrong people inheriting money or assets and some family members losing out, inevitably leading to a great deal of further heartache and expense for a family already dealing with bereavement.

Which would you prefer - your will to be drawn up by a qualified and regulated professional, or an unregulated, unqualified salesperson?

The Panorama Special which was televised on 9 August highlighted the nightmares experienced by individuals using non-lawyer will writing companies to draft their wills rather than obtaining qualified legal advice.

Among the will writing companies reported in the TV programme was one whose proprietors were jailed for depriving beneficiaries of money gifted to them.

As well as other complaints of extremely poor practice the programme revealed some common problems experienced by consumers:

- Lack of skill and competence
- Poor knowledge of inheritance tax
- Hidden charges
- Cold calling and unsolicited mail
- Lack of professional indemnity insurance
- Incompetent drafting
- Poor storage of wills

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Heir hunters - too good to be true...

Page 3



HM Revenue & Customs taxing the rules

Page 4

Welcome

Welcome to the autumn 2010 edition of Hill Dickinson's wealth management newsletter, equity.

We are delighted to announce the arrival of Carol Mason, partner, Nicola Herbert, associate, and Corinne Hough, paralegal, who have joined us from Halliwells in Liverpool, to complement and strengthen our private client team. The family team is joined by Sharon Smith, associate also from Halliwells, and Heather O'Donnell, trainee solicitor.

Our expanded wealth management team comprises highly experienced lawyers who have complementary skills and are committed to delivering exceptional levels of client service.

We are proud that our experience and client skills have been recognised once again by the Legal 500 publication, with our team described as "top of the table" led by the "outstanding" Paul Baker. Paula Milburn, leading our family offering, "impresses clients with her thoroughness, knowledge and level of service".

We look forward to working with new colleagues, clients and contacts and hope that you find the latest edition of equity of interest.

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continued from page 1

The will writing profession is wholly unregulated. Consequently, the non-lawyer will writing companies reported in the TV programme do not have to conform to a minimum standard of training, are not subject to a disciplinary code and do not have to undertake continuing professional education, in contrast to qualified solicitors.

Most worryingly, they are not required to have professional indemnity insurance in relation to inadequate service or negligence.

It is very concerning (as highlighted by the Panorama Special) that there are some non-lawyer will writers who are exploiting the lack of regulation and leaving families in a desperate financial situation.

The Scottish Government has taken action and passed amendments to the Legal Services (Scotland) Bill to ensure that will writers adhere to a set of regulatory rules, with enforcement measures and sanctions to ensure that they conform to acceptable industry practice.

Scotland is ahead of England and Wales in offering such protection.

The Legal Services Board (LSB), which oversees all legal services in England and Wales, has said it would look at "whether a different regulatory approach to will writing is needed".

Liverpool Law Society is considering working with the national Law Society and the Society of Trust and Estate Practitioners (STEP) on a campaign to press Parliament to regulate non-lawyer will writers.

John Gibson, notary public and barrister of Hill Dickinson, stands as parliamentary officer of Liverpool Law Society and comments:

"I propose pressing the Coalition Government and Parliament as a whole to regulate the non-lawyer will writers because they may be exploiting the lack of regulation to the detriment of the consumer."

To ensure that you are protected with a will that is correctly and legally written, signed and witnessed, it is important to instruct a qualified solicitor, preferably one who is a member of STEP.

Hill Dickinson's wealth management team are specialists in the field of making wills and are always happy to talk to you about the preparation of your will.

Philippa Lewis
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Heir hunters – too good to be true.....?

The popular BBC2 series Heir Hunters, with an audience of around 1.7 million viewers, has highlighted the work of probate genealogists, more commonly known as ‘heir hunters’.

Essentially these are companies who trace missing beneficiaries (where they are named in a will) or next of kin (where there is no will and the deceased therefore died intestate) in order to distribute the assets of someone who has died (known as their ‘estate’).

The difference in the basis of charging between the various ‘heir hunting’ companies can be significant, and there are growing calls for tougher regulation. Some of the companies use a contingency fee, commonly known as ‘no-win, no fee’. This fee can be as high as 40% of the inheritance, plus expenses. The potential beneficiary is required to agree to the terms of business of the company before they are told details of the person who has passed away and the size of the estate. More worryingly, it would seem that the practice of some companies is to state that there is no right to cancel the agreement or provide a short ‘cooling-off’ period.

Anyone contacted by an heir hunter should be encouraged not to sign up on the spot. It is possible to go directly

to government lists regularly published which give the name of people who have died apparently without next of kin (bonavacantia.gov.uk). It is therefore possible to look for the names of relatives or people who share a family name. A claim can be made using a linked form on the website.

Executors of estates seeking to trace a missing beneficiary should also take note; an executor must trace all beneficiaries, but they also have a duty to ensure that the costs of the search are reasonable. Executors may be sued personally for failing to carry out their duties in the correct manner, however, specialist insurance may be available to protect the executor.

Our wealth management team has a great deal of experience in advising in relation to intestate estates and all issues relating to beneficiaries. Should you have any queries in relation to these matters please contact:

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HM Revenue & Customs taxing the rules



HMRC has been busy in the courts this year challenging a legal rule called the 'Hastings Bass principle'. In a nutshell, the principle provides that where trustees have made a decision with unknown and unwanted consequences, the decision may be set aside.

In Pitt -v- Holt [2010] EWHC 45, Mrs Pitt created a trust for her incapacitated husband without considering the inheritance tax consequences. On her husband's death the trust attracted large inheritance tax liabilities which could have been avoided had a different type of trust been created in the first place. Mrs Pitt applied to have the trust set aside on the basis of the Hastings Bass principle but HMRC opposed her application. Fortunately, the court decided in Mrs Pitt's favour.

In another case this year, Futter and Cubill -v- Futter and HMRC (2010) EWHC 449, HMRC opposed a trustee's application to use the

Hastings Bass principle to set aside decisions which cost beneficiaries additional and unnecessary capital gains tax. Again, fortunately, the court ruled in favour of the taxpayer.

It is well known within the tax industry that HMRC will vigorously challenge any applications to reduce a tax burden, especially in this economic climate. The balance of power is far from even - HMRC having recourse to the public purse to pursue such matters against the taxpayer. HMRC is now appealing both the Pitt and Futter decisions and it remains to be seen whether the Court of Appeal will maintain the momentum in favour of the taxpayer in relation to the Hastings Bass principle.

The lesson to be learned from these cases is that trustees should never make decisions without proper advice, not only in relation to trusts law but also as to how this interacts with tax law in the circumstances of the case. Our wealth management team has extensive experience in advising trustees in these issues. Should you wish to discuss trust and tax law in greater detail, please contact:

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About Hill Dickinson

The Hill Dickinson Group offers a comprehensive range of legal services from offices in Liverpool, Manchester, London, Chester, Sheffield, Piraeus and Singapore. Collectively the firms have more than 1,300 people including 190 partners.

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