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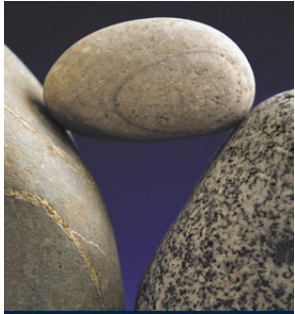
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Wills and Trust Planning for 2009/2010

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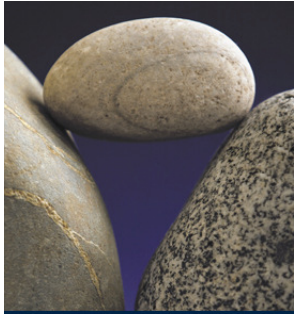


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Why have a will? (1)

- Intestacy
 - if an individual dies without a will his estate will pass under the intestacy rules
 - surviving spouse receives the first £250,000 of the estate, personal possessions and a life interest (right to income) in have of the residue
 - children receive the other half of the residue on statutory trusts
- Wills may be needed in more than one jurisdiction, especially if the client owns property abroad. Consider:
 - foreign estate tax
 - forced heirship in foreign jurisdictions

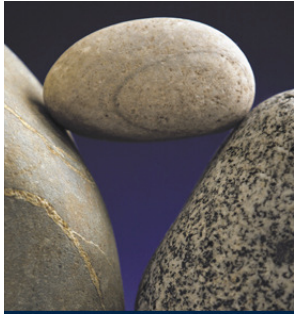


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Why have a will? (2)

- Properly drafted wills minimise an individual's liability to inheritance tax
 - ideally we would aim for there to be no IHT on the first spouse's death and as little as possible on second spouse's death
 - proper Will planning can prevent tax in two jurisdictions (for clients with international issues)

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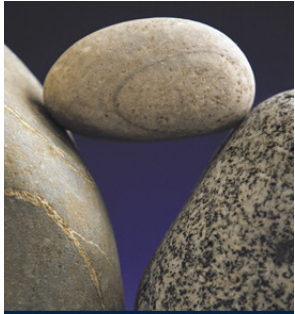


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Wills, Trusts and Powers of Attorney – a changing landscape

- Many legislative changes in recent years
 - risk that existing wills and trusts have fallen out of date
 - new pitfalls in drafting current wills/trusts
- Finance Act 2006
 - IHT regime for trusts
- Finance Act 2008
 - transferable nil rate band
 - non UK domiciliaries
- Mental Capacity Act 2005
 - lasting powers of attorney

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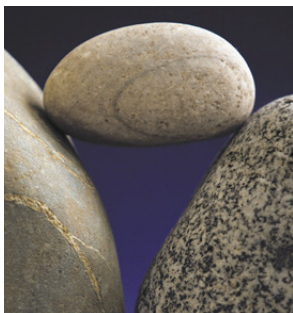


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Before 2006

- Standard features of wills prepared before 2006
 - provision for spouse – residue left outright or on life interest trust for spouse
 - nil rate band discretionary trusts
 - issue with houses
 - discretionary trust over relievable property (BPR)
 - provision for children – residue left outright or on life interest trust for children
 - survivorship clause
 - default beneficiary – in case of family wipe out

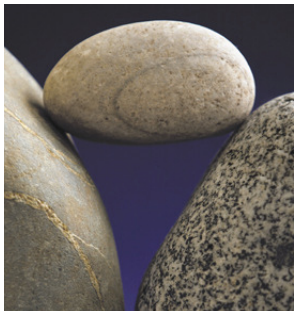


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What has changed since? (1)

- Tax treatment of will trusts altered in 2006
- Legacies to spouses remain broadly unchanged – legacies outright or on life interest trusts pass IHT free to UK domiciled spouses

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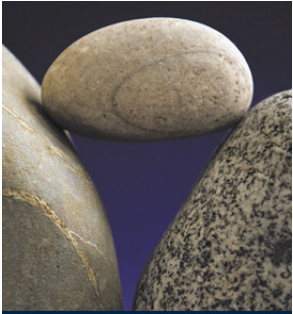


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What has changed since? (2)

- Much more care is now needed in making provision for children in wills. The following options are available:
 - outright legacies or outright legacies at 18 years (but consider levels of responsibility)
 - life interest trusts (IPDIs) for children
 - discretionary trusts – Within the relevant property regime (6% exit and 10 yearly charges)
 - “18 to 25” trusts

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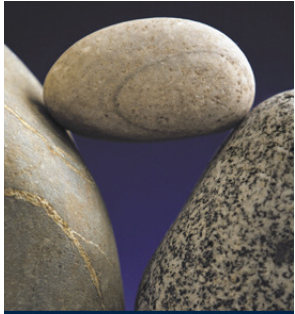


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What has changed since? (3)

- “Mix and match” difficulties regarding IPDIs
 - do you need a will with different “paths”?
 - does existing will need to be changed?
- Be careful if “overriding” an existing life interest trust

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What has changed since? (4) Transferable Nil Rate Band

- Nil rate bands became transferable between spouses from 9 October 2007
- This measure is designed to simplify matters, but it can create new complications
- Nil rate band discretionary trusts
- Transferable nil rate band
 - mechanics of claim - percentage available and records
 - benefits - small estates and widows/widowers
 - possible traps - how it relates to two families/drafting in will

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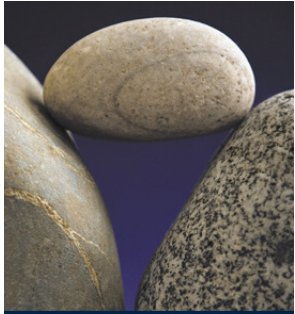


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Other aspects which require care (1)

- Execution
 - two witnesses
- Capacity
 - level of capacity required
 - involvement of doctor
- Revocation
- Claims under Inheritance (Provision for Family and Dependents) Act 1975
- Mixed domicile positions/non-UK domiciliaries



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Other aspects which require care (2)

- Care required where spouses have children by other partners
- Incorrect use of survivorship clauses
 - advantages
 - spouses
 - other beneficiaries
 - disadvantages
 - can lead to loss of one nil rate band if wealth is not equalised between spouses
 - “commorientes”



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Where does this leave us?

- Review wills from time to time
- All pre-2006 wills should certainly be reviewed
- Common will scenario of life interest trust for spouse followed by life interest trust for children will no longer work as well for IHT purposes
- Think carefully about how much children receive and when – flexibility/control v tax benefits

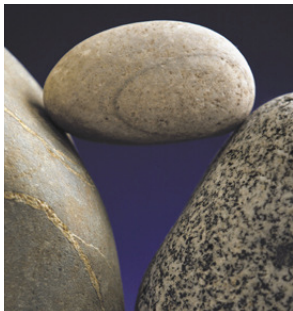


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Where does this leave us?

- Does client want/need a nil rate band legacy?
- Make sure 2x nil rate bands can be used
- If client has a business – consider a relievable discretionary trust under will

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Lasting Powers of Attorney

- Replaced EPAs
- Personal welfare/property and financial affairs
- Capacity
- Safeguards
 - persons to be notified
 - certificate providers
- Replacement attorneys
- Registration
- Why are they necessary?
 - applying to appoint a deputy

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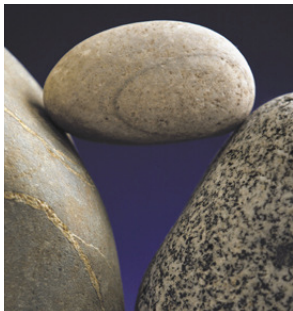


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Death benefits

- Do not pay tax needlessly!
- Write life policies and pension benefits in trust
 - outside surviving spouse's IHT estate
- Check
 - type of trust
 - accumulation period
- Nomination/assignment

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Lifetime Trusts – do the benefits outweigh the costs? (1)

- Pre 2006 individuals could make gifts to trust tax free as PETs
- Still possible to give away assets as PETS to individuals but not to trusts (immediate IHT charge of 20%)
- Where does that leave us?

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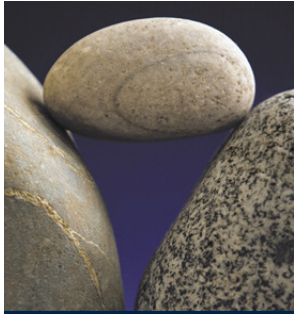


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Lifetime Trusts – do the benefits outweigh the costs? (2)

- Trusts are not dead - 20% charge is not applicable on gifts to trust in the following circumstances:
 - trust fund within nil rate band
 - assets which qualify for business property relief
 - regular payments out of excess income
 - loans
- Key benefit of trusts
 - giving away wealth without giving away control
 - “tried and tested” – a familiar concept
 - can last multiple generations
 - simple (relatively!)
- IHT benefit versus asset control



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Alternatives to trusts

- Family investment company
 - founders retain control as directors or through shares with particular voting (or blocking) rights
 - gift “value” shares family members
 - corporation tax charge only initially (max 28%) but note further tax upon profit extraction
- Family limited partnership
 - retain “general partner” controlling interest and give away “limited partner” interests
 - tax transparent
 - consider regulatory position
 - must operate as a partnership, not simply a quasi trust

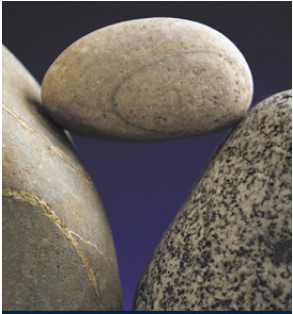


Summary

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- Wills are not as easy as you may think!
- Need to review wills drafted pre 2006/2008
- Provision for children in wills in the light of legislative changes to trusts
- Considerations when relying on the transferable nil rate band
- Consider lifetime planning for IHT purposes
- Tax efficient ways to give away wealth – do not dismiss trusts (!) but other structures exist as well

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Questions?

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