YOUR QUESTIONS ANSWERED

The *Choice* panel of experts answers your queries on tax, pensions, benefits, investment and the law

How can we make changes to our Wills?

Q My husband and I made our Wills about four years ago with a Will writer who has now moved to France. There are a couple of things that in retrospect I am not happy with. First, she told us we needed to appoint professional executors with either a spouse or our children, but I have heard they are expensive and slow to get things moving.

My daughter is a highly qualified accountant and I would prefer her to choose at the time whether or not she needs any help. She can then obtain a price quotation and decide what to do.

Secondly, we arranged a trust for Inheritance Tax planning but now that the threshold has been raised and spouses can 'inherit' any unused nil rate band, I do not think we need this any longer.

Can I just print out a letter stating that we no longer want the professional company to act as executors and removing the trust, sign it along with my husband and get two friends to witness it, as it will be expensive to get a lawyer involved?

Name and address supplied

Richard Grosberg of solicitor Nelson replies:

A You wish to change the executors of your Wills so that you do not have professional executors. I confirm that this can easily be achieved by a codicil – this has to be executed in the same way as a Will and has to refer back to the original Will itself.

Your previous Wills also include trusts which were necessary at the time to preserve Inheritance Tax thresholds for the benefit of the survivor. However, as you are aware, the law has since changed and these trusts are no longer necessary to preserve the Inheritance Tax allowances. In theory, this change could also be completed by way of a codicil but I would recommend that a completely new Will is prepared.

It may well be that, in connection with the Wills, your house ownership was changed from joint tenancy to tenancy in common and, if you are going to change the Wills to remove the trusts, it may be worth considering changing the house ownership back to joint tenancy.

You have asked about the simplest and cheapest way of achieving this. In theory, provided the documents were executed in accordance with the relevant formalities, you could complete these changes yourselves. Alternatively, you could endeavour to use online services which are cheaper than engaging a solicitor face to face but do not have the same level of involvement or advice from the solicitor.

As you might expect, I would recommend you do things properly. Trying to save a small amount of money now in the execution of your Wills could lead to substantial problems and a very large legal bill for your children in the future.

I would recommend you see a local solicitor. At the very least this should be a solicitor who is a member of the Law Society Private Client Section – you can contact the Law Society to obtain a list of your local members, tel: 020 7242 1222.

What can I do about my mother and brother going back on an agreement?

Q More than 20 years ago, my parents were renting a flat from a housing association. At considerable personal sacrifice, my then husband managed to raise enough money to enable them to buy it outright at a discount under the 'right to buy' scheme. We had an agreement that they would continue to own and live in the flat rent-free until they died, at which time it would pass to me and thence to our two sons.

However, subsequently my brother was facing bankruptcy, and to help him, my husband estimated the value of my parents' flat, deducted what we had paid for it plus a little interest and planned to give my brother half the difference as his 'share' Before this plan could be put to my brother, my husband sadly died, but I carried it out. My brother was immensely grateful and was able to move with his young family to a beautiful location in Devon.

Although my solicitor suggested I visit him with my parents and put this arrangement on a formal legal footing, as I trusted them and my brother implicitly I ignored his advice.

Subsequently I remarried and in 2002 my father died. My mother, now 93, asked me to give her the deeds of the flat for safekeeping as my husband and I travel a lot. This seemed a reasonable request. However, when I next visited her I was shocked to discover she has changed her Will. She says it is her flat and she can do whatever she wants with it. I don't mind who she leaves her other assets to but our agreement was that the flat should come to me. After a number of substantial bequests, she has now left the remainder of her estate equally to my brother and me, and he is adamant the gift we made to him that enabled him to buy his house had no strings attached.

Do I have any rights in law with regard to this? The only paperwork I have to support the truth is the original Wills of both my parents and the letter from my solicitor (also now deceased) recommending we put the agreement in a legal framework.

Name and address supplied

Richard Grosberg of solicitor Nelsons replies:

A I am not certain what the terms of your mother's new Will are precisely but it is clear that this no longer reflects the previous understanding you had with your parents. Also, your brother has advised that he does not consider the payment you and your late husband made to be in any way related to his inheritance from your parents.

All of this has understandably left you extremely upset and uncertain about your legal position. The lack of any written legal agreement is clearly a substantial problem for you but it is not necessarily fatal to your chances of establishing that an agreement exists.

There is certainly an argument that both payments that were made were not absolute gifts but were conditional, and that you, as the maker of the payments, can insist these conditions are complied with.

The difficulty is, of course, that your mother and brother will deny that the payments

How can life insurance policy not need a medical test?

Q I'm always seeing advertisements aimed at older people for savings plans from life insurance companies. They suggest you can save each month to pay for your funeral and leave something for your loved ones. There's one that's always on television at the moment with Michael Parkinson. It says you don't need a medical test and that everyone is accepted – but I thought your age and state of health were crucial in setting the premiums for life insurance.

How do these plans work?

Name and address supplied

Annie Shaw of Cashquestions.com replies:

A You've put your finger on the problem with these plans: they accept all-comers. This means that, if you are in anything like a reasonable state of health, the plan will represent extremely poor value, as your premiums will subsidise the payouts to those in poor health who die at an earlier age than you will. Since you can't receive a payout until you have paid a certain number of premiums, they don't represent good value even if you think you won't last long when you sign up.

Many buyers of these policies underestimate how long they are likely to live, so they end up paying more into the plan than they can get out. The plans often also accept very low monthly premiums of only a few pounds, so the charges for administering the plan are disproportionately heavy, which will affect the amounts paid out.

If you want a life insurance product, you would do better to buy a policy via an independent adviser tailored to your age and health profile. If you want to ensure your funeral is paid for, choose a pre-paid funeral plan from a company that subscribes to the Funeral Planning Authority code of practice, such as Dignity, Golden Charter or the Co-op – or simply pay into a savings account.

Meet the *Choice* panel of experts, answering your letters on investing, tax, pensions, benefits, insurance and the law

LAW

DEBORAH CLARK is the head of the Manchester Private Tax & Trusts team at law firm Mills & Reeve LLP. She specialises in Wills, trusts, tax planning, lasting powers of attorney and other private client issues

PENSIONS/ INVESTMENTS

JENNIFER STORROW is Managing Director of Gee & Company, a firm of fee-based financial planners. She specialises in investments and pensions, and answers personal finance questions on local radio and in newspapers

LONG-TERM CARE

PHILIP SPIERS is chief exec of First Stop Care Advice, which provides advice for older people on care and housing (www.firststopcareadvice.org.uk). He is co-author of *Care Options in Retirement*

INVESTMENTS

MIKE HORSEMAN is managing director and founding director of IFAs Cockburn Lucas. He holds advanced qualifications in investment, taxation and trusts and specialises in retirement planning and investments

STATE BENEFITS

LIZ BOULTWOOD is a Benefits and Money Specialist at Age UK. She has worked as a welfare rights adviser in a variety of settings including a law centre, hospice and local authority welfare rights team

TAX

PATRICK MILLARD is a director of TaxHelp for Older People (TOP), an organisation that provides free tax advice to older people on low incomes. To arrange an appointment in your area call 0845 601 3321

TAX/ACCOUNTANCY

MORAG PAGE is a director with accountants Scott-Moncrieff. She has a wealth of experience dealing with tax issues including CGT and Inheritance Tax (www.scott-moncrief.com)

LAW

RICHARD GROSBERG is a solicitor and partner at Nelsons in Nottingham. He advises on Wills, inheritance tax planning and estate administration. He has specialised in this area of law for 20 years

PENSIONS/ TRUSTS

KEVIN MINTER is director of Advison Ltd Independent Financial Advisers specialising in investments and retirement planning. He was Plan-ned Savings Estate Planner of the year 2002

INVETSMENTS

ANNIE SHAW is founder of financial website (www.cashquestions.com) which offers subscribers the chance to ask money questions online. She has worked as a financial journalist and broadcaster

were conditional. Ultimately the matter would have to be decided by a court. This would be an expensive process and there is no guarantee you would be successful.

My strong advice now is that you see a local solicitor to explain the situation to them fully and supply them with any paperwork you might have. If nothing else, they may be able to correspond with your mother and your brother (or give you suitably worded letters to send yourself) to see if the matter can be resolved directly without the need for any litigation.

I was very sorry to hear of all that had happened and, to a large extent, feel that your experience should act as a cautionary tale for others in your circumstances.

Throughout my career I have heard many families state they will never fall out but, unfortunately, this can never be guaranteed and clearly legal agreements become absolutely vital when relationships have broken down.

Are married couples liable for each other's credit card debts?

Q I wonder if you can clear something up for me. If a husband or wife has run up a credit card bill and then passes away, is his/her spouse liable to pay back the debt through the estate? I know this is an unsecured debt, but I am not sure of the position.

Name and address supplied

Annie Shaw of Cashquestion.com replies:

A Debts have to be paid out of the estate before bequests are made. So where a spouse leaves assets to his or her married or civil partner in a Will (or dies intestate), debts would be paid before the partner or other beneficiaries inherit the remainder. In other words, the spouse doesn't inherit all the assets and then have to pay the bills – the bills are paid from the estate first. If the spouse leaves no assets – in other words, dies penniless – the partner is not responsible for any debt incurred solely in the name of the deceased. The debt is not passed on where the credit agreement was only with the deceased person.

Where there is a joint debt – such as a joint mortgage or loan – the parties will usually be what is called 'jointly and severally liable', which means that on the death of one, the other becomes wholly liable for all of it (not just half).

Credit card agreements are normally in the name of one principal cardholder only. The second signatory, where there is one, is generally simply allowed by the principal holder to use the card for purchases, but the credit agreement is with the principal holder alone and is not a joint agreement. If you have any worries, check your credit agreements and ask your partner to do so to see where there are joint agreements.

In short, where the deceased has assets, debts run up in his or her name have to be paid; where there are no assets, debts in a sole name are not passed on; but where there are joint agreements, the second party assumes the whole debt.

Can you advise on children's Isas?

STAR LETTER

Q Could you clarify the criteria for the new children's Isas which I think came in last month. I would like to open Isas for each of my two younger grandchildren, aged 14 and 15. However, I thought I read somewhere that they would only be available for children born after a certain date. Is this correct, or have I misunderstood?

Also, will these investments be widely available? The banks and building societies I have asked seem not to know anything about them.

Mrs C Poplett, Northumberland

Mike Horseman of IFAs Cockburn Lucas replies:

A In his 2011 Budget statement George Osborne announced the birth of the most recent government saving initiative, the Junior Isa. Plans became available for purchase from November 1.

The maximum allowable contribution is £3600 (an increase from the original £3000), and we think this plan will appeal to both parents and grandparents who are fortunate enough to have spare income or capital and are looking to provide a helping hand towards the spiralling costs of both further education and house purchase for their children in later years.

The Junior Isa is replacing the Children's Trust Fund (CTF) and provides all the tax advantages of the CTF but will (and here is the clever bit) not receive any government contributions. The Junior Isa has the following benefits:

- It Is available for any child under 18 who does not have a CTF account – that is, born before September 2002 or after January 2, 2011
- It permits contributions of up to £3600 a year
- It allows contributions from parents or other relatives such as grandparents
- It can be either invested in cash or stocks and shares and bonds
- It provides tax-free capital gains and investment income (although like the Isa Senior it will not allow the tax credit on dividends to be recovered).

This plan, we feel, will suit the savings needs for many parents and grandparents looking to fund university costs as the funds will not be accessible until age 18. The estimated costs on the assumption of a three-year-old child and the need in current terms of, say, £19,000 a year (£9000 tuition £10,000 living costs) will be a staggering £57,000 in 15 years' time, which on a forward annual return of five per cent would require a lump sum of £27,418 to be invested now or a monthly contribution of £215 per month into the Junior Isa.

However, should costs rise by just a mere two per cent (which is conservative), this increases the funds needed to £76,714 in 15 years' time. One thing to bear in mind, on the downside, is that the child will have absolute control and rights over the capital at age 18 so if you are in any doubt about this point, it may be appropriate to fund into the adult version, allowing the full £10,680 to be invested and provide the funding at the point of university entrance from your own account.

Either way, this savings vehicle should be considered and is a welcome addition to the current savings vehicles available, offering a relatively cheap and simple product to all who have the means to provide advance funding and savings for children or grandchildren.

Can you advise on Will making firms?

Q My husband and I, on advice from friends, used a Will making firm to make our Wills. We changed our property ownership to 'tenants in common' and have left everything to our adult children. We are below the Inheritance Tax level.

The friend has since become a widow, and is staggered by the charges the firm wants. They call themselves the trustees.

Can we get out of this Will and, if so, how do we go about it? Do we just make a new one?

M Curry, Essex

Deborah Clark of Mills & Reeve replies:

A As the firm in question has arranged for you to hold your property as tenants in common, this suggests there may be a trust structure in your Wills. If the firm has been appointed as both executors and trustees of your estates, there is the potential for considerable costs to be incurred over time.

As a general rule, there is absolutely nothing wrong with a professional firm acting as an executor and/or a trustee. This service can give valuable support to the family members or friends acting in these roles and can ensure the estate and any ongoing trust are properly managed. With some families, the appointment of a professional can give a level of important impartiality and in certain cases the additional cost is well worth the service given.

However, I would be wary of any firm who makes its appointment as an executor or trustee a condition of the Will writing service. If you know a firm well, you may make a conscious decision to make the appointment but, equally, you may feel that your layman executors should be able to 'shop around' for the most cost-effective and appropriate advice at the time of your death. The level of service they require may differ greatly depending on their time commitments and general circumstances. Even where there are no professional executors, it is obviously open to the layman executors to take advice as and when it is needed.

When considering what to do about your existing Wills, it is important to remember they are your own property and they will not take effect until your deaths. Until that time, you can amend them as much and as often as you like.

You have a couple of options. First, if you are happy with the general terms of your Wills but no longer want the firm to act, you could each put in place a codicil to change the executors and/or trustees. This should be a simple task for any reputable company. The second option is to put in place entirely new Wills. These should specifically revoke your previous Wills so that they are no longer effective. To avoid any confusion, you should write to the Will writing firm asking for your 'old' Wills to be returned to you. If you have put in place new Wills, the previous ones should be destroyed.

Are there any tax implications of a gift?

Q On our granddaughter's 21st birthday, both my wife and I would each like to give her £1000. Can you advise if there are any tax implications for any of us?

C Hunt, Hertfordshire

Kevin Minter of IFAs Advison replies:

A There would be no tax implications with this unless you have already used your £3000 annual allowance each both this year and last year. If you have, it may be a Potential Exempt Transfer and will stay inside your estate for seven years.

Over to you

***Ask The Experts* is a free service exclusively for readers of *Choice*. Our experts aim to answer your questions on these pages in future issues of the magazine.**

Write to Ask The Experts, *Choice*, 1st floor, 2 King Street, Peterborough PE1 1LT. Please aim to keep your letter to no more than one sheet. Or e-mail: (editorial@choicemag.co.uk). If you do not want your name publishing with your letter, please state this in your correspondence.

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