

## WILLS & PROBATE CASE STUDIES



FEE EARNER 

**Georgina Vanden  
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- Trust Arrangements

### TRUST ARRANGEMENTS

We have recently been instructed by several clients who had transferred their family homes into trusts during their lifetimes. These types of trusts are commonly known as asset protection trusts, or family protection trusts. These trust arrangements are typically entered into for the purpose of preserving their wealth for future generations, and safeguarding against erosion of their estates by care home fees. Often, these complex trust arrangements are sold by estate planners, who do not take into account, or advise upon, the adverse legal and tax implications of doing so.

We have recently advised a client on the consequences of putting his home into a lifetime settlement, on advice he received from an estate planning company. The client and his late wife had transferred the family home into a trust almost 10 years prior to instructing us. This meant that his estate on death would not have been able to benefit from the residence nil rate band (£175,000), nor the transferable residence nil rate band from his late wife's estate (an additional £175,000). This is because, in order to claim the residence nil rate band, a deceased person must have owned residential property which passes to his or her direct descendants under their terms of the will or intestacy.

We advised our client and the other trustees of the trust to appoint the property out of the trust to him, and to have a will leaving the property to his children. By doing so, his estate's inheritance tax bill would be reduced by £140,000.

When we are dealing with clients who are considering updating their wills and who wish to carry out estate planning, we need to have a full picture of their estates, taking into account their assets, any trusts they may have set up during their lifetimes and any substantial gifts they may have made.

Our charges for dealing with matters such as these depend on the complexity of the work involved, and the amount of time it would take to carry out the work and admin on it. We do always, however, aim to agree a fixed fee with our clients at the outset.

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### FEE EARNER

#### Tanya Beattie

- Grant of Representation
- Trust Will

### GRANT OF REPRESENTATION

Sometimes clients who no longer live in the UK still have assets in the UK which require a UK grant. I recently obtained a grant of representation for a client based in Thailand whose late husband died without a will.

As UK domiciled individuals are subject to inheritance tax on their worldwide assets but non-domiciled individuals are not, the application and inheritance tax account can be tricky to navigate especially for individuals who do not understand the English legal system.

Working together with our client, we were able to establish that whilst her husband was born in the UK, at the time of his death he had not lived in the UK for over 20 years and had no intention to return. We were therefore able to conclude he was not UK domiciled at the time of his death and as a result, we were able to successfully obtain an English grant to enable my client to collect in her late husband's UK assets without his assets held in Thailand being subject to UK inheritance tax.

### TRUST WILL

I met the client when she was very ill to take instructions for her will. She told me one of her adult children lived with her but was not able to manage their finances independently. I explained to the client the different types of wills I could prepare and based on her family circumstances it was agreed that I would prepare a discretionary trust will. This arrangement would enable her adult child to continue to live in the family home after her death, but with the capital in the trust being protected for other beneficiaries. I prepared a letter of wishes that accompanied the will, setting out her intentions in relation to the trust and the distribution of her estate. This meant that instead of the adult child receiving inheritance immediately, the trustees could release money as and when the beneficiary needed them, preventing the beneficiary from squandering their inheritance.

The client died a month later and since then I have been helping the trustees deal with her estate and meet all their regulatory obligations as trustees. The trustees have been able to support the adult child who continues to live in the property and they are working together to see if the beneficiary might be able to live more independently.