

Get ready to rewrite your Will

Lawyers are writing to hundreds of thousands of clients to urge them to review their wills following the Chancellor's clampdown.

Do I need to review my will?

Yes, if it will set up a trust when you die. Two types of trust will be affected – “accumulation and maintenance” and “interest in possession” trusts.

The former are often set up by parents or grandparents who want assets to pass to their children when they die, but who want the trustees to retain control of the money for a certain period. Until the budget, the trustees could retain control of the income until 25 and the capital for 80 years from the creation of the trust.

As a result of the budget, however, these trusts will have to be rewritten so that the assets pass absolutely to the beneficiary at 18 or the trust could face a 6% tax charge every 10 years on the value of assets above the inheritance tax (IHT) threshold – £300,000 this tax year.

You might set up an “interest in possession” trust in your will where you want to provide your spouse with an income, but make sure that capital passes to your children.

Following the budget, assets above £300,000 could be subject to a 40% IHT charge when they pass into trust for your spouse – plus a 6% tax charge every 10 years – unless you change the terms. You will have to give your spouse significant control over the trust, which many people may be reluctant to do if they are in a second marriage with children from previous relationships.

There is no need to rush to change your will because you can alter it within two years of death, so take advice.

And what if I set up a trust now?

If you set up either of these two types of trust in your lifetime, rather than in your will, you will now face three tax charges that did not apply before the budget – 20% on assets worth more than the IHT threshold that are paid into the trust, another 6% on assets

above the threshold every 10 years and then a charge of up to 6% when the trust is wound up.

These charges will also apply if you make new gifts into an existing trust. However, you can avoid the charges if the trusts change their rules before 2008.

Linda Pratt, Solicitor with Ridings Law, is a member of the Society of Trust and Estate Practitioners and founding member of Solicitors for the Elderly. If you feel you would like an informal talk with Linda to discuss any of the above issues please telephone 01943 434 400 and Ridings Law will be pleased to help to give you peace of mind.