



A guide to tax, trust and probate law from



**WHISKERS LLP**  
SOLICITORS & NOTARIES

SUMMER 2009



## IN BRIEF

### FEES FOR POWERS OF ATTORNEY CUT

Following many complaints about the registration fee and the complexity of the forms that need to be completed when registering a Lasting Power of Attorney (LPA), the Government has relented and promised a simplification of the paperwork and a reduction, from 1 April 2009, in the fee for registering an LPA from £150 to £120.

### TRUST EXPENSES CAN BE ALLOCATED

The Court of Appeal has recently ruled that, in appropriate circumstances, trustees' expenses can be apportioned between 'income' and 'capital', a ruling that may help trustees who keep appropriate records to reduce the tax liabilities of the trusts they manage. HM Revenue and Customs had argued that all 'dual function' expenses did not attract tax relief.

## ESTATES AND ASSET PRICES

**One of the biggest problems now facing executors is that as the recession takes hold, most assets, other than cash, are falling in value, which can mean that the value of an estate for Inheritance Tax (IHT) purposes is greater than the market value later on.**

Where assets are disposed of at a loss within twelve months of the death of the testator, IHT relief is available.

If the assets which have lost value are quoted shares, a claim can be made on their sale within one year of the date of death, but not on a transfer. If the assets consist of land, the time period for a claim is four years from the date of death. The loss claim can only be made by the 'appropriate person' (in most cases the executor) and therefore any asset transferred which is then sold at a loss will not qualify for relief.

There is clearly room for tax planning here, not only regarding the timing of transfers but also whether assets should be sold or whether they should be transferred and then sold.

Which approach is best will depend on the tax situation of the beneficiaries as well as the estate.

Lastly, there is a

similar relief which is available for lifetime gifts. Where an asset which has been gifted prior to death has fallen in value and is subject to IHT, a claim can be made for the reduced value to be substituted in the valuation of the estate at the date of death. This relief is only available if the transferred asset is still owned by the person to whom it was gifted or their spouse or civil partner. Changing asset values present opportunities for estate planning as well as extra burdens in administration.

**Contact us for advice on all aspects of estate planning and wealth preservation.**



# Private Client **ACT NOW**



## UNCLEAR OWNERSHIP CAUSES WILL CONFUSION

**A recent case highlights the sort of problems that can arise when family members make informal financial arrangements with one another. It concerned a man who had been left a 'half interest' in his late mother's estate. He had lent his parents half the money needed to buy their house.**

The problem was that it was unclear if the house was part owned by him and, if so, whether his mother understood that when she made her will.

The court had to decide whether he was entitled to a share in the house. It concluded that he was. It then had to decide whether her will meant he was entitled to half of what was left of the estate (which was little), or whether his share of the house should be taken into

account in working out what he was due from her estate.

Proper documentation would have made the case unnecessary.

**We can advise you of the appropriate steps to take in similar circumstances.**



## EXECUTORS BE WARNED

**HM Revenue and Customs (HMRC) have changed their policy regarding Inheritance Tax (IHT) – possibly leaving executors of estates to face unexpected IHT liabilities.**

The problem results from the way HMRC intend to deal with estates in which gifts are made in the seven years prior to death. Such gifts are called 'potentially exempt transfers' in IHT terminology, because they affect the IHT position unless the donor survives seven years after making the gift.

HMRC have previously raised any enquiries about such gifts within 60 days after the papers relating to the estate have been filed. This time limit is now abolished, allowing them to instigate an investigation into the gifts made prior to death several years after the estate tax returns are filed. It is therefore sensible to conduct a review of the deceased's financial records for the seven years prior to the death

and to retain the records in case there is an enquiry.

**We can advise on all aspects of estate administration.**



## TRUSTEES' RESPONSIBILITIES – BE CAREFUL

Trustees are reminded that under the Trustee Act 2000 they are required to assess and keep under review the suitability of trust investments and to obtain proper advice when appropriate. A failure causing loss to the trust could in some circumstances lead to a claim on the trustees' assets.



**WHISKERS LLP**  
SOLICITORS & NOTARIES

6 MITRE BUILDINGS, KITSON WAY, HARLOW, ESSEX. CM20 1DR

TEL 01279 439439 FAX 01279 439100

E-MAIL: [ENQUIRIES@WHISKERS.CO.UK](mailto:ENQUIRIES@WHISKERS.CO.UK)

[www.whiskers.co.uk](http://www.whiskers.co.uk)