

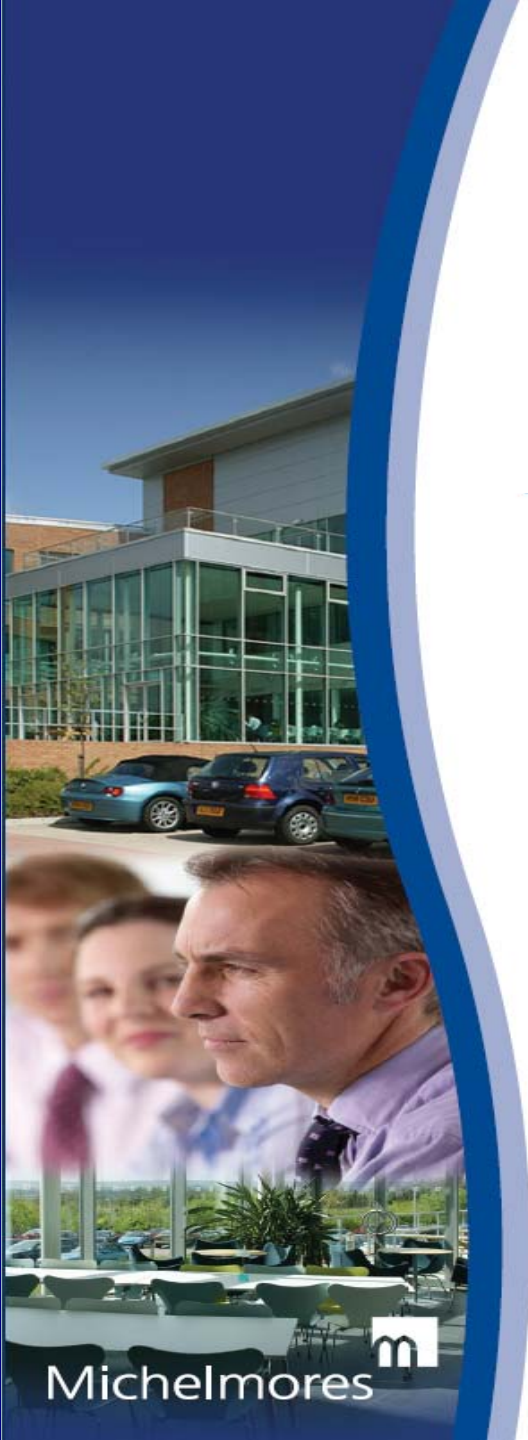


Michelmores

Exeter Fundraisers Group

Legacy Management for Charities

23 October 2009



Michelmores



More than just lawyers

Shivaji Shiva

Head of Charities and Social Enterprise

Legacy Management Practical Steps

Making a Start

- Ask
- Consider how – *NSPCC Legacy Charter*
- Make it easy – a Legacy Pack
- Charities paying for wills
- A Legacy Vision?

Guidance to Donors

- Encourage residuary bequests?
- Identifying the charity
 - branches
 - deeds of variation
- What if the charity merges?
 - S75C Charities Act 1993 – the register of mergers
 - cy-pres clauses
- Gifts for specific purposes
- providing for family members

What if you succeed?

- Smee & Ford
- Monitoring charges and fees
- Reviewing estate accounts
- Requesting information
- Ex-gratia payments
- Indemnities to executors

Chris Butcher

Head of Probate Department

Legacy Management for Charities

- General Procedures
- Inheritance Tax
- Capital Gains Tax
- Deeds of Variation

General Procedures

- Initial checks
 - charity name and its status as a charity
 - correct address of the charity
 - provisions of will: does it refer to amalgamations of charities?

Contact with Charities

- send copy will to charity
- enquire as to legacy officer
- provide accounts or basic information from outset: keep informed
- notify charity of grant of probate
- lead contact with some charities?
- interim and final distributions
- tax deduction certificates

Legal duty of charity to collect what is due

- chattels to members of the family?
- can a charity claim/defend an action at all costs?

Inheritance Tax

Basic rule: no IHT

- gross up legacies?

Division of the estate

- equal shares with non-exempt beneficiaries?
- or larger net value for the charities?

Husband died first leaving whole estate to widow. No IHT payable

Widow left:

20% to one charity

1% to each of another five charities

25% of her estate to each of her three children

Net estate on the widow's death	£1,650,000
Available IHT threshold	<u>£650,000</u>
Taxable estate	£1,000,000
Administration expenses including VAT	£25,000

Example 1

Estate to be divided equally (pro-rata) amongst all the beneficiaries

Net estate		£1,650,000
Less Deductions:		
Inheritance tax	£261,110	
Administration expenses	<u>£25,000</u>	
		<u>£286,110</u>
		£1,363,890
25% share		£340,972

Example 2

A larger net share for charities

Net estate		£1,650,000
Less administration expenses		£25,000
		£1,625,000
25% share for the charities		£406,250
75% share of <u>whole</u> estate for the children		£1,237,500
Less IHT threshold		£650,000
Taxable		£587,500
IHT		£235,000
25% share for each of the children	$£983,750 \div 3$	£327,916

Capital Gains Tax

Basic rule

- no CGT for charities
- annual allowances for executors
- 18% on excess

Increase of probate value or capital gain?

Appropriation to beneficiaries

- CGT annual allowance
- houses
- shares

Deeds of Variation

- legacy to charity?
- legacy to individual and then Gift Aid?

Example

Husband died leaving whole estate

- in trust for widow for life
- then to be divided between their grandchildren

The widow left whole of estate to their only son

Trust fund on widow's death	£350,000
Widow's own estate	£320,000
Total aggregable estate for IHT	£670,000
Less double IHT threshold	£650,000
Taxable amount	£20,000
IHT @ 40%	£8,000

Apportionment of IHT

Will Trust	$\frac{\pounds 350,000}{\pounds 670,000} \times \pounds 8,000$	
		= $\pounds 4,180$

Estate	$\frac{\pounds 320,000}{\pounds 670,000} \times \pounds 8,000$	
		= $\pounds 3,820$

Net value of will trust

(excluding administration expenses) £350,000

Less IHT £4,180

£345,820

Estate £320,000

Less IHT £3,820

£316,180

Deed of Variation of estate to give £20,000 to charity

Revised figures:		previously
Will Trust	£350,000	£345,820
Estate	<u>£300,000</u>	<u>£316,180</u>
Total (no IHT)	£650,000	£662,000

Tony Cockayne

Head of Disputed Wills and Trusts

*“Let’s talk of graves, of worms, and
epitaphs:
Make dust our paper, and with rainy eyes
Write sorrow on the bosom of the earth.
Let’s choose executors, and talk of Wills.”*

- William Shakespeare, Richard II

- Testamentary Capacity
- Lack of Due Execution
- Lack of Knowledge and Approval
- Undue Influence, Fraud and Forgery

- Inheritance (Provision for Family & Dependents) Act 1975
- Proprietary Estoppel

Banks v Goodfellow [1870]

1. The Testator understood the nature of his act and its effects.
2. The extent of the property which he was disposing.
3. He must understand and appreciate the claims to which he ought to give effect.
4. No order of mind shall poison his affections, pervert his sense of right or his will in disposing his property.

Inheritance Act Claims

The Applicant must prove:

1. The Deceased died domiciled in England and Wales
2. That the Applicant comes within a class of persons entitled to claim
3. That reasonable financial provision has not been made

The Application must be made within 6 months
of the
Grant of Probate

Categories of Claimants

- Spouse or civil partner
- Former spouse or civil partner if not remarried
- Child or any person treated by the deceased as their child
- Anyone cohabitating with the deceased for the whole of the 2 years before death
- Any person immediately before death who was being wholly or partly maintained by the deceased

What can you do?

- Forfeiture Clause
- Make reasonable provision for all beneficiaries
- Include a Statement of Reasons
- Make lifetime gift

The End

- Any questions?

Shivaji Shiva

**Head of Charities
and Social Enterprise**

Email: tss@michelmores.com

Michelmores

More than just lawyers