



Nil Rate Band Discretionary Trust in Wills

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We have Nil Rate Band Discretionary Trusts in our Wills – do we need to change them?

This is a very common situation we come across and is often the case when clients have not reviewed their Wills for some time.

Pre – 2007

Before October 2007, [Nil Rate Band Discretionary Trusts](#) were very often included in Wills. The reason for this was so that the inheritance tax nil rate band of each married couple could be used. If the nil rate band was not used on the death of the first spouse, it would be lost and would therefore have a negative effect on the surviving spouse's estate when they eventually passed away. Given that most people left their estates to each other and therefore qualified for spouse exemption, the nil rate band was often lost without the inclusion of such a trust in the will.

Post – 2007

In October 2007, the law changed, and transferrable nil rate bands were introduced for spouses and civil partners, which meant that on the first death, there was no inheritance tax saving and every surviving spouse could claim their deceased spouse's unused nil rate band. This transfer works even if the first death took place before the law changed in 2007.

Are there any benefits in keeping a Nil Rate Band Discretionary Trust in your Will?

Yes, there are some advantages:

1. Surviving spouse requires care

If, at the time of the first death, the surviving spouse has become unwell and requires care, the trust can protect some of the assets. The trust will retain up to £325k worth of assets, and therefore this will be disregarded by the local authority when assessing the surviving spouse's financial position and how much they may be required to contribute.

2. Assets likely to increase in value

The estate may include an asset which, at the time of the first death, is likely to go up in value over the coming years; in this case, there is an advantage in having such a trust as it keeps the increase in the value outside of the surviving spouse's estate.

3. Divorce or Bankruptcy of beneficiaries

If there is a scenario in which you envisage that your beneficiaries could find themselves in a situation where they are bankrupt or facing a divorce, a Nil Rate Band Discretionary Trust does protect the assets from the financial risk of both situations as it allows for the funds to be ring-fenced. This would also be the case if you had a particularly vulnerable beneficiary who you felt could not manage large sums of money.

Are there any disadvantages?

One of the main disadvantages is the administrative inconvenience of such trusts. For example, the need to prepare annual accounts, tax returns and dealing with the management of trust assets. Nonetheless, the advantages usually far outweigh the disadvantages if there is a concern regarding the protection of your assets or a possible inheritance tax saving.

What happens if I die with the Nil Rate Band Discretionary Trusts still in my Will?

Depending on your circumstances, it may be best for the trust to be wound up on the first death and for the assets to be passed to the surviving spouse. It can be wound up within two years of death so that the transferrable nil rate band is available for the surviving spouse when they eventually pass away. A formal deed of appointment can be prepared to deal with this.

If nothing is done when the first spouse passes away, it will not be possible for the surviving spouse to claim the deceased spouse's nil rate band.

Overall, it is, therefore, crucial to remember that your will must be something that is reviewed regularly as it could lead to unnecessary administration and additional costs if it does not fit with your current circumstances and the most recent legislation.

How can we help?

If you would like to discuss this further or if you have any questions relating to your Will or an estate, we have a specialist [Wills & Estates](#) team who would be very happy to assist. For more information, please contact us at online.enquiries@LA-law.com or call on [01202 702612](tel:01202 702612).