



What to do to avoid a large inheritance tax bill

04/09/2015 – **Stephen King**, Partner and Head of Dispute Resolution and Contentious Trusts at Payne Hicks Beach.

Canny Manny Davidson has a history of business acumen second to none, a self-made man who has generated a fortune from the property business. He is also a generous man, providing support for the Royal London Hospital and in the arts he has provided funding to the Wallace Collection.

As the wealth he generated increased he not surprisingly became somewhat exercised with that little three letter word "tax" particularly with an eye on his children, Maxine and Gerald. Like many others he was particularly concerned about the potential liability for Inheritance Tax on his estate and in 1967, not long after his children were born, he decided to establish a trust fund which is reputedly now worth £600 million. His generosity to his children did not stop there. On 2 August 1993 he and his wife Brigitta purchased Lyegrove in Gloucestershire. Rather than register themselves as owners to their grand home, they registered their two children as owners so that Lyegrove would not form part of their estates for Inheritance Tax.

However, tax planning of this nature makes an enormous assumption - that you will not fall out with your offspring. Sadly, in Manny's case this assumption was wrong and the family are now at war in the Chancery Division of the High Court over various matters including the power of Manny to appoint new trustees to the trust.

Here lies the heart of the matter - "control". If you want to avoid Inheritance Tax you need to divest yourself of the asset in question so that you no longer own or control it. Often with a family home, elderly parents try to transfer their home to their children and continue to live in it themselves to avoid Inheritance Tax fully on the family home on their deaths. However, they would need to pay a full market rent to the new owners, their children, to avoid the transfer being a gift with a reservation. If the transfer was held to be a gift with a reservation then the house would in any event form part of their estate on their deaths.

Trusts used to be a means of tax planning but their effectiveness has been much reduced by swathes of legislation.

Sadly for Manny and Brigitta, by registering Maxine and Gerald as the owners to Lyegrove, they handed over all the control at the outset. Now not only can they no longer live in Lyegrove but the dispute is so acrimonious that their children have refused them entry to visit it so that they can no longer admire artworks by Gainsborough and Hogarth which adorn the walls. Manny and Brigitta now cannot prevent their children selling Lyegrove and it is currently on the market.

Suppose they had originally owned and later gifted Lyegrove to their children; even if Manny and Brigitta had survived such a transfer by, seven years and, achieved their aim of

avoiding Inheritance Tax on its value, the transfer of ownership would still have produced the same result: they would have transferred control.

With a trust structure a settlor may attempt to retain an element of control and one of the aspects of the current litigation is over the power of Manny to appoint new trustees. Settlers may attempt to exercise a degree of control over trust assets by such means.

I have had experience though of non-UK settlors settling assets on discretionary trusts (thinking that de facto they retained control) and then discovering that the trustees do not behave as poodles meekly ready to follow the direction of the settlor. Loss of ownership usually means loss of control. Some offshore jurisdictions will allow the creation of revocable trusts whereby the settlor can simply revoke the trust and have the funds returned to him. However such arrangements would be ineffective for tax planning for UK residents.

Poor Manny is not the first person to repent of his generosity. King Lear divided his kingdom into three for his daughters but thought he could still "lord it" turning up at Regan's and Goneril's with all his retainers. His lesson was a cruel and bitter one losing the only daughter who truly loved him.

Manny is now of the view that he should not have been so generous to his children and is reflecting on whether it would be so bad for HMRC to receive 40 percent of Lyegrove on his death when to ensure avoidance of Inheritance Tax on the "family seat" he has chosen not to own it and cannot even now visit.

Stephen King is a Partner and Head of Dispute Resolution and Contentious Trusts at Payne Hicks Beach.

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Stephen King
Partner and Head of Dispute Resolution