

Welcome to the July 2016 Private Client Newsletter.

AWB Charlesworth Solicitors have a growing team of experienced Lawyers who solely specialise in Wills, Trusts and Probate— both for your business and personal requirements. In this newsletter our Solicitors take a look at the definition of a ‘Trust’, what your responsibilities are if you have agreed to become an Executor and also investigate Inheritance Tax Relief and its application to farms with development potential. But firstly, we wish to extend a warm welcome to our new addition to the team, Jenny!

Welcome to Jenny Barron!



Jenny Barron joins AWB Charlesworth Solicitors as Wills, Trusts and Probate Solicitor— with a particular interest in advising farmers.

After our recent merger with Worger Howcroft Solicitors in Bingley, which already adds a wealth of experience from Andrew Worger to the Private Client team, Jenny Barron is the latest addition to the Wills, Trust and Probate department in the Skipton Office.

Jenny specialises in Wills, Trusts, Probate, Tax Planning and Court of Protection matters and is keen to work closely with the existing Agricultural team specialising in Tax Planning for farmers.

Prior to AWB Charlesworth, Jenny headed up the Private Client Department at a local town centre solicitors- climbing the

ranks after completing her training contract at the same Firm- initially starting out her legal career as a temporary secretary.

Jenny studied Law at Newcastle upon Tyne University attaining a 2:1 degree, followed by further studying for her Plc at College of Law York.

When asked about her chosen career path Jenny said:

“I love my specialism because due to the wide variety of clients and work involved every day is different. In addition it is an area of law where the majority of times I am able to make a positive contribution to peoples and their families lives at what can be the hardest times. Furthermore I am excited about the prospect of working closely with the AWB Charlesworth Agricultural team. “

What is a Trust?

Solicitor Mark Shaw explains that the basic principles of a trust are simple; it usually involves one or more individuals called trustees holding an asset (such as a house or some money) for the benefit of another called a beneficiary.

So, for example, if money is left to someone in a will but they are still a child when the person making the will dies, the money will have to be legally looked after by the trustee appointed in the will until the beneficiary reaches the appropriate age. Although the trustee will have legal control of the money in this example, it will not belong to them so they cannot do as they please with it. They must always act in the beneficiary's best interests.

Trusts can be and are often more complicated than the example given, but the fundamental principles always remain the same. The trustees are looking after assets for one or more beneficiaries. When doing so they must follow the terms of the trust, which are often set out in a legal 'rule book' called the trust deed. This 'rule book' can be created by someone during their lifetime or upon their death in their will.

But why create a trust? Why not just let the beneficiary legally own the asset if they are the ones to benefit from it? There are several reasons why a trust is used, which include the following;

1. As in the example above, the beneficiary may not be old enough

or have the mental capacity to hold the asset themselves.

2. The beneficiary may not be trusted with the assets – for example they may have a substance or gambling addiction and would squander the money or put themselves at risk if they could do as they wish with it.

3. The beneficiary may be at risk from third party claims from creditors or upon bankruptcy or divorce.

4. A trust can be used to ensure assets ultimately pass to certain beneficiaries whilst allowing one or more beneficiaries to benefit from them during a fixed period or during their lifetime. For example someone could gift a house in trust for a beneficiary such as a spouse to live in until they die at which stage the ultimate beneficiary such as the children from a previous relationship become entitled.

5. A trust can be used to structure assets in a tax efficient manner.

These are just a few of the many reasons why a trust may be the appropriate way for assets to be held. It is therefore always advisable to discuss these with a specialist trust advisor. please contact our Private Client Solicitor Mark Shaw on (01756) 692866 or mark.shaw@awbclaw.co.uk



Have you agreed to be an executor?

Partner Andrew Worger explains the principal duties of executors.

It goes without saying that suffering bereavement is emotionally a very difficult time for loved ones. Unfortunately to compound this difficult period there are usually also lots of things to be organised. From a legal point of view someone will need to have the legal authority to deal with an estate of the deceased. One of the advantages of making a will is that you can choose who has this legal authority. This is usually one or more trusted relatives or friends but can also include a professional advisor. If there is no will then legal rules provide for who has the right to deal with an estate. A simplified summary of an executor's role is that they must take custody of and value the assets of the deceased, pay any debts and tax and then distribute the assets under the terms of the will. In reality this role is anything but simple.

If you have been an executor you may already be aware of the challenges-however if you have not yet had to take on the role, the following are pointers you might need to be aware of:

1. It will be your responsibility to pay any tax (such as Inheritance, Capital Gains and Income) from the assets in the estate. This will need to be declared correctly after thorough enquiries to ensure the accuracy of the information provided to HMRC. An inaccurate return can lead to an inevitable penalty fine.

2. You will need to take steps to pay any debts of the deceased. If you have distributed the estate and a debt later comes to light you could be personally responsible to pay it. There are however simple steps which can be taken to protect against this risk.

3. Before payments are made to beneficiaries it is important to ascertain if any of them are bankrupt. If payments are made the executor can be liable to third parties including the trustee in bankruptcy and/or creditors of the bankrupt beneficiary.

4. Certain individuals, usually family members and unmarried partners, sometimes have grounds to make a claim against an estate if adequate financial provision is not made for them in the Will. These types of claims must generally be made within a fixed time period. If an executor distributes the estate to the beneficiaries during this time period they could face personal liability to deal with the claim.

5. Unless you are acting in a professional capacity you cannot charge the estate for your time (although you may be entitled to reasonable out of pocket expenses).

It is worth bearing in mind that just because a person is named as an executor does not mean that they are obliged to act.

However, once actions have been taken as an executor it is not usually possible to then decide not to continue. If named as an executor in the will of someone who has died recently and you wish to take on the role, you may want to speak with **Andrew Worger on (01274) 519351 or Andrew.worger@awbclaw.co.uk** to guide you through the process and help you avoid the potential pitfalls.



Partner Liam O'Neill explores the issue of inheritance tax relief for farms with development potential.

There is a long-established inheritance tax (“IHT”) relief in relation to certain farmland and buildings. This IHT relief is called Agricultural Property Relief (“APR”) and can be available at a rate of either 50% or potentially 100% depending upon how the Farming business is structured.

Farmers need to be aware that APR is not automatically available on the whole value of the farmland and buildings. APR is available on the “agricultural value” of the farmland and buildings. This agricultural value is a method of valuation. In arriving at the value an assumption is made along the lines that the property concerned can only be occupied and used for the purposes of agriculture. This is akin to what is commonly known as an “agricultural tie”. If

there is a difference between the market value (i.e. what the property is worth in the real world) and the agricultural value then APR is not available on the difference.

Let us assume that a farm complex includes a couple of stone barns which are capable of being converted into private dwellings. This possibility of conversion will have an effect on the market value of the barns. Let us say the barns, used for feed, medicines and sheltering cattle over winter have an agricultural value of £120,000 but a market value of £320,000 taking into account the development potential (sometimes called “hope value”). APR will only partially help with the IHT issue if the farmer who owns the barns dies.

This is where another IHT relief called Business Property Relief (“BPR”) becomes important. Like APR, BPR is available at different rates, either 50% or 100% depending upon how the farming business is structured. The rules for BPR are quite complex, but the basic premise, is that the farming business needs to be of a predominant trading nature and the business needs to have been owned by the individual for at least two years. If the barns are used for business purposes BPR should plug the gap between the agricultural value (relieved by APR) and the market value.

Some farms have started to rely on rent from holiday-cottages or residential property held on AST’s as part of the overall “trade” of the farming business. If the business is structured correctly BPR may be available on these types of property.

Farmland Inheritance Tax Relief

Farmers also need to be very aware of land which has development potential. Is there merit in them transferring this to the generation below before planning permission is obtained to save IHT? Farmers should explore this. However, the impact on the business, IHT anti-avoidance rules and Capital Gains Tax issues need to be considered as part of the decision-making process.

Our Inheritance tax specialists can assist farmers with advice about these matters. Please call **Liam O'Neill** (AWB Charlesworth Partner and Solicitor) on telephone number **(01756) 692 883** or liam.oneill@awbclaw.co.uk



AWB Charlesworth Solicitors aim to make life easier for you. Our team will provide you with expert legal advice for your personal life and your business presented clearly and efficiently. Each with their own specialist skills, our lawyers provide friendly local support backed by skilled expertise in a comprehensive range of legal services.

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For more information visit our website at: www.awbclaw.co.uk

MEET OUR PRIVATE CLIENT TEAM

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