

## Lasting Powers of Attorney

Lasting Powers of Attorney (LPA) were introduced on the 1st of October 2007 as a result of the Mental Capacity Act 2005 and took the place of Enduring Powers of Attorney (EPA). An EPA makes provision for an Attorney to be registered if an individual is considered mentally incapable of dealing with their own financial affairs. Whilst no new EPAs may now be set up, there is no reason why old EPAs should not continue to be registered if appropriate to do so. This means that EPAs already in existence do not have to be rewritten.

The provisions of an LPA are potentially much wider than an EPA and fall into two parts:

Dealing with an individual's financial affairs, a Property and Financial Affairs LPA (broadly the same as the old EPA) and

Dealing with an individual's health and welfare, a Personal Welfare LPA

An LPA can be registered at any time. If it is registered before an individual becomes mentally incapacitated, it is then in place should it ever be needed. Registration of an LPA does not mean that an Attorney will immediately or indeed ever need to take responsibility for an individual's financial affairs. In these circumstances, an individual is considered to be of "full capacity" unless there is evidence otherwise and should be included in all decisions affecting them subject, of course, to them fully understanding what is being considered for them.

In all cases an Attorney must act in the best interests of the individual he is representing.

In our opinion and contrary to popular belief, LPAs are not only appropriate for the elderly. The Practice has had experience of a young man going into hospital for routine surgery. He received an overdose of anaesthetic and spent many years on a life support machine. He had business interests which due to his medical condition could not be administered to and this resulted in his business collapsing. With either an EPA or an LPA in place, this situation could have been avoided.

In previous editions of FIND the importance of having a Will has been discussed. It is the Practice's opinion that an LPA can be as important as a Will when considering the future financial security of a family.

If you would like to know more about LPAs or perhaps think that now is the time to review your Will, then it is recommended that you speak with your Solicitor. If you do not have a Solicitor then your usual contact at Morley and Scott would be happy to make a recommendation.

## RETIREMENT INCOME FUNDING – A necessity for all of us

It is all too easy to put off funding for retirement due to other financial commitments, typically, starting a family, a large mortgage commitment and any number of other reasons. One that is often quoted is that retirement is a long way off, there is plenty of time to make provision for it and "in any event there is always the state pension".

It is the State Pension that we would like to focus on.

Neither the Basic State Pension nor the State 2nd Pension is funded. That is to say, the National Insurance Contributions that we pay today to secure state pension credits are paid to today's pensioners. Unfortunately, the Treasury does not have a huge war chest that it can draw on to fund our state pensions when the time comes and realistically never will have.

This means that in order for our state pensions to be paid when we retire there needs to be sufficient people working to fund them.

### Now consider the following statistics:

According to Government Statistics published in the summer of 2005, the population of the UK was 60.2 million and the average age of the population was nearly 39 years old. Unbelievably, due to advances in medical science, The Government Actuary believes that the average age of the population will rise to 60 by 2030.

Successive governments have recognised that they have a long term problem to deal with and have progressively worsened the State 2nd Pension and its previous guises (eg SERPs) but have almost certainly not done enough to tackle the problem. This is against a backdrop of the current government's decision to increase pension payments in line with the National Average Earnings Index, instead of the Retail Prices Index, which will further increase the government burden.

The only solutions to overcome this financial time-bomb is for government to either cut other areas of expenditure which is unlikely or more likely "Means Test" state pension benefits. When having this conversation with clients in the past, we have been told that if this is the case then making retirement income provision will be counter productive. Unfortunately this is not the case, because "means testing" is based on two criteria, income and capital assets. This means potentially, anybody with a home could well find themselves with much reduced or possibly no state pension entitlement at all.

If you or perhaps your children would like a no obligation consultation to discuss retirement income funding strategies then please contact Andrew Johnstone e: [andrew.johnstone@morleyandscott.co.uk](mailto:andrew.johnstone@morleyandscott.co.uk) or t: 020 7387 5868

# Tax Efficient Investing

Frequently we are asked by clients whether they might perhaps invest more tax efficiently and ideally tax free. There are many ways of achieving this objective, however there are often snags such as unavoidable investment risk or having to invest with strings attached, as is the case with pensions.

Two methods that individuals can utilise to invest potentially tax free with no strings attached are Individual Savings Accounts and utilising the capital gains tax regime.

## Individual Savings Accounts (ISAs):

The rules attaching to ISAs are due to change on 6 April 2008. After this date individuals may invest a maximum of £7,200 (increased from £7,000) into a full investment ISA, of which £3,600 (increased from £3,000) may be invested in a cash deposit account tax free. This means that if the maximum of £3,600 is held in a cash deposit account, the maximum that may be held in an investment ISA is limited to £3,600.

The attraction of ISAs to investors is that holdings are invested tax free regardless of their personal tax position. We have clients who have been investing in PEPs and ISAs for many years and have hundreds of thousands of pounds worth of investments protected from both income and capital gains tax. Importantly though they are not shielded from inheritance tax.

Many people feel that ISAs are restrictive from an investment perspective. In reality this is not the case as they may sit neatly within a client's investment portfolio and do not compromise their overall investment strategy.

## The Capital Gains Tax Regime:

Capital Gains Tax has been in the news over the last four months, following Alistair Darlings decision to simplify it in his pre budget statement. With effect

from 6 April 2008 there will be a flat rate of capital gains tax set at 18% which will apply to investments regardless of how long they have been held. This change has been controversial, however there have been winners and losers as a result of it.

Setting these changes aside there are four often overlooked advantages to the current and new capital gains tax regime. These may be summarised as follows:

We all have an annual capital gains tax exemption. It is understood that this will be around £9,500 for the 2008/09 Tax year. This means that profits of up to the capital gains tax exemption may be realised free of tax annually. Unfortunately, if a capital gains tax exemption is not used in a tax year it cannot be carried forward.

Spouses each have a capital gains tax exemption, so they will be able to jointly realise profits of approximately £19,000. This does not necessarily mean that each spouse has to have historically held investments personally, as they can be transferred between spouses without a capital gains tax liability arising.

Previous capital losses regardless of how small can be offset against future profits. This is not time restricted, but records of losses should be available if they are ever called for by your inspector of taxes.

Whilst on death any outstanding income tax liabilities must be settled by your executors, the same is not the case with capital gains tax. When you die, any profits attaching to your investments will cease to be assessable to capital gains tax. Tactical capital gains tax planning between spouses can be very effective if one is in poor health perhaps with a short life expectancy.

If you would like to consider a review of your financial affairs to check that you are invested as tax efficiently as possible, please get in touch with your usual Morley and Scott contact or speak to a Financial Planning Manager directly.

The above comments are based upon our understanding of the proposed legislation at the time of going to press.

## CONTACT

For further advice on any of the areas mentioned in this newsletter, please contact:

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