

# Finelines 35

The Newsletter of Lubbock Fine Spring 2005

## Making a Will and appointing professional executors

By Jeff Gitter



Jeff Gitter.

*"One can survive anything nowadays except death."*  
Oscar Wilde

### Making a Will

If statistics from the Law Society are to be believed, then at least sixty per cent of us in the UK fail to make a Will.

*"Eternity is a terrible thought. I mean, where's it all going to end?"* Tom Stoppard

Many of us are resistant to making a Will, thinking that it's too morbid; we're too young to worry about it; it's too time consuming; or just too expensive. Whilst it's not usually a bundle of fun to think about our own demise and what we want to happen to our estate afterwards, if we're old enough to drink and vote then we should be responsible enough to make a Will. In many cases it really doesn't take long although it does require some thought and, if your affairs are reasonably simple, it's often far less expensive than you think. However, if it's a task that

does get put off, the ensuing post-death chaos and disappointment, not to mention the problems of inheritance tax, can cause real trauma and will only serve to increase the impact of the bereavement on family and friends.

So, the first step is to make a Will which at least ensures that your nearest and dearest will inherit your assets in the way that you wish and that they won't be beset with other problems at such a traumatic time. If you don't leave a Will your hard earned money will be divided according to intestacy rules, resulting in financial loss to the people you really want to inherit your estate. Even worse, if a Will is badly structured or is ambiguous then it could "fail", in which case the intestacy rules prevail as if there had been no Will at all. (See *Intestacy Rules table on next page*)

*"To her, death is quite romantic."* Bob Dylan

Once you've decided to go ahead, there are three basic alternatives. The first is that you can write your own with the aid of a Will-writing kit which is easily obtained over the Internet. This is potentially disastrous in the same way that the do-it-yourself house purchase kits can be and if disaster should result, then there is no one to blame but yourself and you won't even be there to help!

The second alternative is to go to a Will writer who is not a qualified lawyer but still charges you for making your Will. Always check out their experience, how long they've been in business and that their insurance cover is adequate in case they get it wrong. Remember, if the price seems too good to be true, then it probably is.

Much the best option is to have your Will drawn up by a solicitor. If you do this, you will have protection should they get it wrong. Many firms produce guides and questionnaires to help you to decide what should be in your Will and they will also store the finished document for you without charge.

Even if you do have a Will in place, the position should be regularly reviewed as personal circumstances and tax legislation will change. At the very least, re-visit your Will if you:

- get married
- have children
- separate
- get divorced
- wish to appoint testamentary guardians for your minor children (under the age of 18), in the event of your death
- have children reaching majority
- wish to change your executors
- wish to review your tax position generally.

*"Dying is a very dull, dreary affair, and my advice to you is to have nothing to do with it."*  
Somerset Maugham

In order to ensure that inheritance tax liabilities are mitigated as far as possible and to understand what alternatives might be available, an initial meeting with your accountant would be prudent. After that, it is the turn of your solicitor to ensure that your wishes are properly converted into your Will. However, it will minimise your legal fees if you have been through the nitty-gritty with your accountant beforehand, as their charges should be less than those of a solicitor, because they will already be familiar with many of your circumstances, both personal and financial.

### Appointing your executors

*"Death is not the end. There remains the litigation over the estate."* Ambrose Bierce

Why appoint a professional executor when your uncle and your cousin could probably do the job just as well? Well, in truth, they probably can't.

An executor is a personal representative who is required to act with 'utmost good faith to administer and distribute an estate diligently and correctly'. The duties of an executor are twofold – first to collect

the deceased's assets and account to the Inland Revenue for the appropriate amount of inheritance tax; and secondly, to distribute the deceased assets in accordance with the Will. There is a complicated tax return to complete so probate can be obtained and this must be submitted and agreed by the Inland Revenue. In cases where an executor is also a trustee with continuing responsibilities, it may also prove to be his or her responsibility to administer and/or invest funds on behalf of (often minor) beneficiaries, so here again a professionally trained person is preferable.

*"Death is not the worst that can happen to men."*  
Plato

For many professionals a nice fat executorship is the chance to charge excessively, with impunity. It's true that some cases are complicated but many are reasonably straightforward. So what's the best thing to do to avoid an estate being "mugged"? Here's a checklist for the person making the Will:

- Executors can include members of the family including spouses, adult children and, if you are single, nephews and nieces. Executors can also include a trusted family friend and/or a 'professional'. If you appoint a professional choose the individual and not the firm, unless you are prepared to have any partner of that firm act for your estate.
- Only appoint people whom you (a) trust and (b) feel will be able to cope with the difficult (and often distressing) task of administering your estate. Before naming them in your Will, check with them that they are willing to take on the responsibility.
- People often appoint a close family member along with a professional advisor, such as their accountant.

*"This wallpaper will be the death of me; one of us will have to go."* Oscar Wilde

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# Making a Will and appointing professional executors

...continued

And here's a checklist for the executors after the will has been opened:

- Ask for quotations from at least two different firms of solicitors.
- If you find yourself as co-executor with a professional, ask him or her to quote in advance for the work and to commit to an agreed time scale.

*"I am ready to meet my Maker. Whether my Maker is prepared for the great ordeal of meeting me is another matter."* Winston Churchill

## Advantages of appointing your accountant as executor

*"I hope I die before I get old"* Pete Townshend

Unlike your lawyer or your bank, your accountant will have a detailed knowledge of your finances, business, family and most importantly, your overall tax position. When obtaining probate, duplicated professional costs can be eliminated. If other professionals are required to act in the disposal of assets (e.g. estate agents, solicitors), having an accountant as an executor means that fees will be watched and kept in check. Unlike other professionals who often charge a percentage of the Estate, accountant's fees are usually based on the time involved, which, in the case of a large estate, means that they will be usually be substantially lower than a bank's or a lawyer's might be. If in doubt, ask them to quote. In any event, an accountant will often seek legal advice when it's needed.

*"When you've told someone that you've left them a legacy the only decent thing to do is to die at once."* Samuel Butler

## Sacking an executor

It's difficult to remove an unpaid executor if the Will is properly drawn up and stipulates who the executors are. Although the Will must contain a 'charging clause' to enable professional executors to charge for their work, all fees must be approved by the other executors before he or she can start charging.

*"Old age isn't so bad when you consider the alternative."* Maurice Chevalier

## And finally....

*"I shall have to die as I have lived, beyond my means."* Oscar Wilde

Relatives, beneficiaries and even executors of the deceased can feel extremely isolated and vulnerable at such a time. Here's where having your accountant as an executor can really pay dividends. He will know exactly how to talk to fellow professionals and will be able to assess whether the fees being charged are fair. He will also be able to handle problems that grieving relatives are too distraught to deal with. And, due to the nature of the relationship, the deceased's accountant is more likely to know what was in his or her mind and this may prove useful when dealing with any complex questions or problems arising from the Will.

So, don't delay! Making a Will is one of the most important things you can do for your dependants.

*"It's not that I'm afraid to die, I just don't want to be there when it happens."* Woody Allen. ●

### Brief outline of intestacy Rules

Your status	Surviving relatives' & dependents' position	
Legally married	Your spouse gets everything <b>if your estate is below £125,000</b> .	
Legally married with children	<b>If your estate exceeds £125,000</b> , your spouse receives absolutely £125,000 plus a life interest in half of the excess. Your children would get half of the excess over £125,000 plus the other half on the death of your spouse. Should any of your children die before you, then their children would be entitled to take their parent's share.	
Legally married, no children but parents/brothers/sisters/grandparents/aunts/uncles	<b>If your estate is valued at between £125,000 and £200,000</b> , your spouse gets everything.	<b>If your estate is in excess of £200,000</b> , your spouse gets £200,000 plus half the balance. The remaining half goes to the other relatives in this order of priority – parents; brothers/sisters; half brothers/sisters; grandparents; aunts/uncles; spouses of aunts/uncles
If you are not married but have children	Your estate will be shared between the children with nothing going to your partner. Should your children die before you then their children would take their share.	
If you are not married, have no children but have other relatives	Your estate will be shared equally amongst relatives in same order of priority as above. If any of these have predeceased but have living children, then the children will take their parents' share. Your partner inherits nothing.	
If you are not married and have no other relatives	Your estate will go to the Crown!	

*It should be noted that intestacy rules do not recognise "common law" partners at all and "children" includes adopted and illegitimate children but excludes stepchildren.*

# The Freedom of Information Act

## From the start of 2005, everyone in the UK has the right to request all kinds of information about the management and work of public bodies across the country.

Organisations from No. 10 Downing Street to the police, local councils and even village primary schools, are open to public scrutiny under the Freedom of Information Act. The Act was introduced in 2000 to make government more open and transparent. It aims to help people understand how public bodies work, why they make the decisions they do and how they spend public money. Under the Act you can request almost any piece of information from these public bodies.

There are some restrictions on the kind of information that can be supplied and it's still not clear to what extent people will get the answers to the questions asked. However, you can now use the information commissioner to challenge the decisions you disagree with.

## What organisations are subject to scrutiny?

The Freedom of Information Act applies to all information held by 'public authorities' in England, Wales and Northern Ireland. 'Public authorities' refers to all organisations that have a role in public life including central government departments, local authorities and councils, the police, the NHS, schools and local education authorities, universities and publicly owned companies.

## What do we have a right to know?

We can request almost any specific piece of information. For example, we might be able to ask what our hospital's policy for allocating beds is, or what exactly council tax is being spent on, or even why is the local swimming pool being closed?

The organisation will have to release all the information relating to this matter that doesn't contain private or sensitive information about other individuals.

Currently, each organisation has to run a 'publication scheme'. This is just a guide to what information is available about the organisation and explains how this information can be obtained.

## Want more information?

If the information required is not already in the publication scheme, it can be specifically requested from the organisation. They can charge a fee for this service. The request must be made in writing. The organisation will normally have to respond within 20 working days. But there are circumstances in which this time limit can be extended.

## What information can be withheld?

Organisations have the right to withhold certain information. For example information cannot be released if it is against public interest. There are other, more specific, types of information that organisations can withhold and these are laid out in the Act.

## What can I do if the information is withheld?

If an organisation decides to withhold information they must make this known and give an explanation within 20 working days of the information request. There are circumstances in which they may need longer to consider the public interest.

## Appeals to the information commissioner

If you are not satisfied with the decision, appeals can be made to the information commissioner to review it. If the commissioner agrees with you, the organisation can be compelled to release the information. However, ministers have the right to veto the release of information that relates to the work of central government departments. They will have to explain the decision to veto before MPs. This veto might be extended to include other organisations as well.

## Appeal to the information tribunal

If you are unhappy with the decision of the information commissioner, appeals can be made to the information tribunal. The information tribunal has the power to overturn decisions made by the information commissioner. This applies to decisions made in your favour as well; the organisation you want information from can also appeal to the information tribunal. ●



# Client Profile - Pharma Health Care Limited and Prakash Mashru

## Tax Year-end Planning 5 April 2005



Prakash Mashru.

**Pharma Health Care Ltd and Prakash Mashru have been clients of Lubbock Fine's for over three years, during a period of rapid growth and development. The story of the company and the product development makes interesting reading.**

"We now provide Pharma Health Care with a full range of services including bookkeeping, accounting, payroll, taxation, company secretarial and business consultancy," said Lubbock Fine partner, Pankaj Shah. "They've come a long way from humble beginnings and it's been very exciting to be a part of such a dynamic business."

Prakash came to the UK from Tanzania in 1971 and, anxious to complete his education, Prakash Mashru did his A' Levels, followed by reading Pharmacy at London University. Equipped with the basics, he took a job with Boots to do his pre-registration training.

After a year with Boots, as a newly qualified pharmacist and with the optimism of youth, Prakash begged and borrowed, persuading the banks to lend him enough money to bravely buy a family owned pharmacy in Ealing. From the platform of that first acquisition, more pharmacies were acquired. Within a few years, Prakash started to get a little bored with retailing, feeling in his bones that he wasn't a retailer at heart. Having made that decision he began to sell off his shops until he was just left with his original Ealing base. Searching for a more practical application of his professional knowledge and his interactions with patients and GPs led him to research into the distressing and common condition of eczema and its treatments.

He started working with his pharmacist wife on eczema formulations in the pharmacy and eventually decided to create an 'ideal emollient' that would be both clinically effective and cosmetically appealing. He informally trialed the cream on two eczema patients and a local GP who also was an eczema sufferer, with promising results. The GP referred some of his own patients to try it and Prakash began to supply it to other eczema sufferers at the pharmacy. "That's the great thing about community pharmacy," he said, "there was a strong professional relationship with the local community so they trusted me and were willing to try the product."

Due to increasing demand, it was time to find a contract manufacturer to make large batches. The product did not, at that stage, have a name but eventually the name CETRABEN® was arrived at by his wife- a suitably medical sounding name yet pronounceable. Unfortunately, a very similar name had been registered by a fast moving consumer goods giant. Against the advice of his patent agents, Prakash made a direct approach and obtained the company's permission to use the name for his eczema products. He registered the name as a UK trademark and it has since been registered in the EC, USA and most major markets of the world.

That was merely the beginning. Prakash now had manufacturing, distribution, credit control, and marketing to consider. After several false starts he managed to persuade national wholesaling giants to stock it on a sale or return basis. The product sold out within a matter of weeks because it provided pharmacies with a superior product to recommend and a better profit margin than many similar existing products.

To increase awareness of the product Pharma Health Care contacted the Eczema Society and was invited to display at their annual meeting in Euston. A lady attending the exhibition liked the product and recommended it to her consultant at a dermatology hospital. This consultant took the highly unusual step of contacting Prakash, saying that her initial clinical impressions about the product were good and that she wanted to try it on some of her other patients. At this stage the company managed to strike a manufacturing and a nationwide distribution deal with Carter Wallace Ltd., a large multinational company. It was then that the product finally started generating some meaningful revenue, although Prakash still had the Ealing pharmacy to keep the wolf from the door

His intention had always been to obtain a license for the cream as a medicine from the UK regulatory body MHRA, which would propel it into a wholly different arena. It is very rare for an individual to undertake a task of that magnitude due to the huge amount of work required, but Prakash was prepared to put his money where his mouth was and began investing in clinical trials and tests to compile a dossier for the license application. By now several consultant dermatologists were very keen on the product and it began to be used increasingly at major hospitals.

The dossier was compiled, submitted, approved and an eczema license was granted. The product became available on prescription in the UK and required a major marketing exercise to doctors, hospitals and pharmacies.

Around about this time in the company's development, Prakash was advised by his lawyers to look for a larger, more substantial firm of accountants. One of their recommendations was that he should see a firm called Lubbock Fine. "I initially contacted Pankaj Shah for specific tax advice as tax was increasingly becoming an issue I needed to address," he said. "Having met Pankaj and with the stage my business was at, I felt confident to move my business lock, stock and

barrel to the firm, as I felt that Lubbock Fine could be of tremendous help to me - which indeed they have proved to be" he summarised. "Prakash and I have a great working relationship," added Pankaj Shah. "We are in very regular contact regarding all aspects of the business."

Work then began on developing a bath emollient for eczema which was also licensed by the MHRA in 2002. It wasn't long before Prakash attracted the attention of some big pharmaceutical companies with whom he began to negotiate, eventually arriving at a deal with Sankyo Pharma which is the second largest pharmaceutical company in Japan and 20th in the world. They have in-licensed the products from Pharma Health Care for the prescription and over-the-counter markets.

CETRABEN®, emollient cream and CETRABEN® emollient bath additive are now widely used for eczema in the UK and in India. Agreements for launch in five other major world markets are close to being finalised. Pharma Health Care has an active development pipeline for products in the treatment of eczema and psoriasis.

Prakash has also managed to find the time to have a personal life; he is married to a pharmacist and they have two children. His nineteen year old son is studying Economics and Politics at The London School of Economics and his daughter is in her first A' Level year at Westminster School studying Spanish, French, Economics, Maths.

Having sold the original Ealing Pharmacy some time ago, Prakash has devoted considerable time to charitable work and is a Trustee of the charitable concern, Connect India. ●



**Is there time to consider some planning to maximise your tax relief entitlement before the year end, 5 April 2005? Yes.**

### 1. Individual Savings Accounts (ISA'S)

Have you maximised your investments into ISA's for 2004/05?

The annual £7,000 limit means that had you invested the maximum for each year since ISA's were introduced in 1999, you could now have at £42,000 invested tax free.

### 2. Capital Gains Tax (CGT)

#### Annual Exemption

Are you utilising your tax free CGT annual exemption of £8,200? Married couples get one annual exemption each.

So, should you sell an asset or transfer one to another family member (not your spouse)? You could even transfer an asset to your spouse, who then sells it to utilise the annual exemption.

#### Taper Relief

Care is needed to ensure that you maximise the effectiveness of any taper relief you are entitled to.

Consider the timing of the disposal of assets; possibly delay selling until after 5 April 2005 or an inter-spousal transfer prior to sale.

### 3. Enterprise Investment Schemes (EIS)/ Venture Capital Trusts (VCT)

#### EIS

EIS's are direct investments into unquoted trading companies. The potential tax benefits are:

- Income tax relief up to 20% of the amount invested
  - Deferral of capital gains tax gains arising on other assets, and/or no CGT when you ultimately sell your EIS shares (conditions apply of course!)
- Maximum EIS investment for 2004/05 is £200,000.

#### VCT

Similar to EIS's but you invest in the VCT, which in turn makes direct investments into various unquoted trading companies. Investment in VCT's attracts income tax relief at 40%.

The maximum VCT investment for 2004/05 is £200,000.

### 4. Pension Contributions

Pensions simplification ("A day"), 6 April 2006 approaches. It's time to review your pensions funding to maximise your annual tax relief limits and to fully understand the new rules.

### 5. Inheritance Tax (IHT)

If you're thinking about passing your assets to your family, consider utilising your IHT annual exemption. Each year you can gift £3,000 IHT free. Again spouses both get their own exempt amount. If you did not make any gifts in 2003/04, then your annual exemption is doubled to £6,000.

It may also be possible to gift more than the basic annual £3,000 by making regular gifts out of your existing income.

*The information above is for guidance only. Please speak to your contact partner before implementing any changes. ●*

# Interest on overdue debts

In our Winter 2002 issue, we explained that legislation about interest on overdue debts had been extended so as to grant all businesses the statutory right to claim interest. If no payment terms have been agreed between the parties then the Act sets a default period of 30 days from the date of delivery or from the date on which a purchaser has notice of the amount of the debt. After this period has expired, interest can begin to run.

The amount of interest is calculated at 8% above the Bank of England base rate (or the official rate) for the day on which payment must be made or from the end of the last day of the default period. The Act is also retrospective in that businesses can charge interest on existing debts provided the contract was made after 1st November 1998.

With effect from 1 April 2005 Lubbock Fine is amending its terms of business insofar as they relate to interest on overdue accounts. We are dropping our previous policy and adopting the statutory rate of interest as explained above. It is not our intention to charge interest as a matter of course, but we reserve the right to charge interest (as has always been our policy), and when we do so in future the rate charged will be the statutory rate. ●



## Russell Bedford director elected to serve on IFAC Transnational Auditors Committee

**Peter Stefanou CPA, a director of Russell Bedford International, has been elected to join the Transnational Auditors Committee of the International Federation of Accountants.**

The International Federation of Accountants (IFAC) announced the outcome of an election to choose new members of its Transnational Auditors Committee (TAC). The results include the election of first-time nominee Peter Stefanou CPA, a director of worldwide accounting group Russell Bedford International, as an 'alternate' on the committee.

As well as being a standing committee of IFAC, the TAC is the executive arm of the Forum of Firms (FoF) - an association of the world's leading international accounting firms and networks that promotes an international quality standard for transnational audit practices. The composition of the TAC reflects FoF membership, with representatives from large, medium and small member firms.

In his role as an alternate committee member, Peter Stefanou will attend and participate in all the upcoming TAC meetings. He is also entitled to vote in the absence of the designated voting representative, as stipulated in the FoF constitution. Mr. Stefanou will serve on the TAC for a two-year term. His term took effect on 11 November 2004 following the conclusion of the IFAC Council meeting.

Peter Stefanou is managing partner of Russell Bedford Stefanou Mirchandani, a member of Russell Bedford International, with offices in New York, Washington DC and Philadelphia. He has over 26 years' experience in providing audit, accounting, tax and consulting services to businesses in the USA, Canada, Europe and Asia. His focus is on start-up to medium-size companies seeking public listing in the USA. He is a licensed CPA with an MBA in finance. ●

# Congratulations to our client

## Karl Jenkins OBE

**B.Mus., F.R.A.M., A.R.A.M., L.R.A.M., F.W.C.M.D., F.T.C.C**



**Lubbock Fine client, Karl Jenkins, was awarded an OBE for services to British Music in the 2005 New Year's Honours List.**

Raised in Wales, Karl received his initial music education from his father, a local teacher, organist and choir master. After grammar school and playing oboe in the National Youth Orchestra of Wales, he read music at the University of Wales, Cardiff before moving onto postgraduate studies at the Royal Academy of Music, London.

It was in jazz that he initially made his mark, frequently playing at Ronnie Scott's club before co-forming Nucleus, which won first prize at the Montreux Jazz Festival. This was followed by a period with Soft Machine, one of the seminal bands of the 1970s. Through various incarnations, 'Softs' played venues as diverse as the 'Proms', Carnegie Hall and the Newport [Rhode Island] Jazz Festival.

In the field of advertising music he has won several industry awards including the prestigious D&AD for best music [twice] and the 'Creative Circle Gold'. Credits include *Levi's*, *British Airways*, *Renault*, *Volvo*, *Tag Heuer*, *Pepsi* and countless more.

It is perhaps for his Adiemus project and 'classical' works for which he is best known. Adiemus has topped classical and 'pop' charts around the world. Jenkins has conducted the Adiemus project in venues all over the world as well as in London's Royal Albert Hall.

Recent commissions include works for the Royal Ballet; BBC Proms in the Park, the National Youth Orchestra of Wales; Leslie Garret; a marimba concerto for Evelyn Glennie; *The Armed Man - A Mass For Peace*, commissioned by the Royal Armouries (which, as of March 2005, has received about a hundred performances in the UK) and many more. 2002 saw the premiere of his double harp concerto 'Over The Stone' commissioned by HRH The Prince of Wales.

Other projects include scoring and conducting an album of rock classics by Bonnie Tyler. He has written anthems for UNESCO and for the opening of the Welsh Assembly as well as choral commissions for leading Welsh choirs.

His concertante, 'Quirk', commissioned by the London Symphony Orchestra and conducted by Sir Colin Davies, was premiered in February 2005, as part of its centenary season.

In 2004 he entered Classic FM's 'Hall of Fame' at No 8., the highest position for a living composer

In recent years, Karl has been made both a Fellow and an Associate of the Royal Academy of Music. He has also become a Fellow of the Royal Welsh College of Music & Drama, a Fellow of Trinity College Carmarthen and was presented by Classic FM with the 'Red f' award for 'outstanding service to classical music' ●

We're always delighted to feature good news about our clients. If you have something special that you'd like to shout about, please email [marketing@lubbockfine.co.uk](mailto:marketing@lubbockfine.co.uk) and we'll try to get your story into our next issue.

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