Transfers of Farm or Business Assets

EMAIL

info@lynchsolicitors.ie

WEBSITE

www.lynchsolicitors.ie

TEL

052 6124344

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TRANSFER OF ASSETS

WHAT DO I NEED TO CONSIDER IF TRANSFERRING A PROPERTY?

- Property already owned with your spouse on a tenants-in-common legal basis should be changed to a joint-tenant basis.
- If there is a mortgage on the property you wish to transfer, the financial institution must consent to the transfer of the property into joint names.
- Assets can only be transferred when you are solvent.
- If a person who has transferred property is declared bankrupt, the courts can seek to reverse any transfers made in the previous 5 years.
- Transferring property to a spouse is the most tax effective way of transferring assets.

WHAT IS THE DIFFERENCE BETWEEN A TENANCY IN COMMON AND A JOINT TENANCY?

Tenants in Common

- Each person owns a specified portion of the property. The portions can be equal or one person can own a greater portion than the other.
- In a tenancy in common scenario the shares of the co-owners will not pass to the survivor when one of the owners dies. The Will of the deceased owner or law of intestacy determines who takes what.

- If no Will exists, usual laws of intestacy apply. This situation could result in unintentional outcomes whereby multiple people own shares in a property.

Joint Tenants

- Both parties own the whole property. If one person dies the property automatically passes to the survivor. This is the most common form of property ownership for married couples, cohabiting couples and sometimes close family members.

TAX RELIEF AVAILABLE TO TRANSFEROR (PERSON TRANSFERRING THE ASSET)

CAPITAL GAINS TAX RETIREMENT RELIEF

Capital gains tax retirement relief is a relief from capital gains tax (CGT) available to individuals who dispose of all or part of the 'qualifying assets' of their business. The qualifying assets could, for example, include business assets used in a trade (such as premises, goodwill or farming land) or family company shares.

CGT retirement relief can potentially reduce a CGT tax bill on the sale of such assets to zero, provided the sale satisfies certain conditions.

Disposal to	Age of Disponer	Consideration Amount	Relief
A child of the owner	55 yrs. - 66 yrs.	Full amount	Full relief

Disposal to	Age of Disponer	Consideration Amount	Relief
	> 66 yrs.	Upper limit of €3 million	Full relief
Any other person	55 yrs. - 66 yrs.	Up to €750,000 (lifetime limit)	Full relief
		> €750k	Partial or no relief
	> 66 yrs.	Up to €500,000 (lifetime limit)	Full relief
		> €500k	Partial or no relief

QUALIFYING CONDITIONS

These qualifying conditions apply:

- The disposal must be made by an individual (and not for example by a company).
- The individual must be 55 or over. The amount of relief is restricted if the individual is older than 66.
- The disposal must be of qualifying assets (e.g. business assets or family company shares).
- The qualifying assets must have been held for a minimum period immediately prior to the disposal – normally 10 years.
- When the disposal is of family company shares the individual must have been a working director for a minimum of 10 years up to the date of disposal, 5 of which were on a full-time basis.

TAX RELIEFS AVAILABLE TO TRANSFER (PERSON TO WHOM THE ASSET IS BEING TRANSFERRED)

CAPITAL ACQUISITION TAX RELIEFS

1. AGRICULTURAL RELIEF

- Agricultural relief applies in respect of both **gift tax** and **inheritance tax**. It operates by charging the tax on a reduced market value (referred to as 'agricultural value') of the particular agricultural property. Market value is reduced by 90%.

QUALIFYING CONDITIONS

These conditions **must** be satisfied:

- The property/assets received must be 'agricultural property' (as defined) at the date of the gift or at the date of death, in the case of an inheritance. They must also be 'agricultural property' on the valuation date, if this is different from the date of the gift or inheritance.

- The beneficiary must satisfy the '80% agricultural property' test on the valuation date after taking the property/assets.

- 1.This was a joint initiative by the Ministers for Finance and Agriculture, Food and the Marine. The Working Group's report was published as part of Budget 2014. Capital Acquisitions Tax Manual 2.The beneficiary, or lessee where the beneficiary leases the agricultural property, must satisfy the various 'active farmer' requirements.

ACTIVE FARMERS

In summary, there are three ways to be an "active farmer":

- Farm the land as an active farmer
- Be a qualified farmer and farm the land
- Lease the land to an active farmer or to a qualified farmer

QUALIFYING PERIOD

A beneficiary, or a lessee where the beneficiary leases the agricultural property, must farm the agricultural property for a period of at least 6 years, commencing on the valuation date

Leasing of Agricultural Property

Instead of personally engaging in farming activities, a beneficiary may lease the agricultural property to a 'farmer'. The same 'qualifying period' and conditions apply.

2.BUSINESS RELIEF

CAT relief is given by reducing the market value of a gift or inheritance by up to 90% where the asset is relevant business property and the benefit meets the conditions for CAT business relief.

WHAT IS "RELEVANT BUSINESS PROPERTY"?

"Relevant business property" must be one of these:

- a business or an interest in a business. "Business" is defined as an activity which is carried on for gain and it includes the exercise of a profession or vocation, as well as a trade.
  Note that a single asset used in a business, such as a factory, will not qualify for the relief if transferred to the beneficiary on its own without the business.

- unquoted shares provided that the beneficiary will own more than 25% of the voting rights after taking the gift or inheritance

- unquoted shares provided that the beneficiary controls the company within the meaning of s 27 Capital Acquisitions Tax Consolidation Act 2003 after taking the benefit. In general, the beneficiary and his family must control the company between them and the control test for S. 27 is a 50% test.

- unquoted shares provided that the beneficiary owns at least 10% or more of the aggregate nominal value of the issued share capital of the company after taking the shares and has worked full-time in the company throughout the period of 5 years ending on the date of the benefit.

- land, buildings, plant and machinery owned by the Disponer and used wholly or mainly for the purposes of a business carried on by a company controlled by the Disponer (with a 51% control test), or used wholly or mainly by a partnership of which the Disponer was a partner.

MINIMUM OWNERSHIP PERIOD

To qualify for the relief the relevant business property must have been owned for a continuous period of 5 years prior to the date of the gift or inheritance. However, if the inheritance is taken on the death of the Disponer the relevant period is 2 years prior to the date of the inheritance. Ownership by the disposer's spouse, civil partner or by a trustee will count for the purposes of satisfying this requirement.

CLAWBACK OF RELIEF

Any business which replaced it, ceases to trade within a period of 5 years after the date of the gift or inheritance

3. FAVOURITE NEPHEW OR NIECE RELIEF

The relief if it applies allows the Transferee to avail of the Group A CAT Tax Threshold.

Your nephew or niece is a child of your:

- brother
- sister
- brother's civil partner
- sister's civil partner

Conditions for the relief:

Your nephew or niece must have worked for you for the five years immediately before they receive the gift or inheritance either:

- for 15 hours per week in a small business (run by you and your spouse or civil partner)

OR

- for 24 hours per week in a larger business (that is, business where there are other employees).

The relief applies only to assets used in the business.

CURRENT CAT THRESHOLDS

	Group A	Group B	Group C
On or after 12/10/2016	€310,000	€32,500	€16,250

EXEMPTION ON TRANSFERS AVAILABLE TO TRANSFEREE (PERSON TO WHOM THE ASSET IS BEING TRANSFERRED)

1.CONSANGUINITY RELIEF

The relief if it applies reduces the stamp duty rate to half of the normal rate.

You will only qualify for the relief:

- if the person who transfers the land to you is under 67 years of age at the date they transfer the land

  or

- where there are co-owners of the land, if they are all under 67 and

- where you and the person who transfers the land to you are related persons.

Related persons include lineal descendants, civil partners, the civil partner of a parent and adopted children. You should check the full list of related persons who qualify in Schedule 1 of the Stamp Duty Tax and Duty Manual.

In addition, you must either:

- farm the land for at least six years

OR

- lease it for at least six years to someone who will farm it.

If you are farming the land, you must:

- hold a specified qualification or obtain it within a period of four years from the date you get the land

OR

- spend at least 50% of your time farming land (including this land transfer).

If, instead of farming the land yourself, you lease it to someone else to farm, that person must:

- hold a specified qualification or obtain it within a period of four years from the date you got the land

OR

- spend at least 50% of their time farming land (including this land transfer).

You, or the person leasing the land, must:

- farm it on a commercial basis

and

- intend to make a profit from it.

If you fail to abide by these terms, you no longer qualify for the relief

2. YOUNG TRAINED FARMERS RELIEF

The Relief if it applies allows full stamp duty relief.

Another much publicised relief is the Young Trained Farmer Relief from Stamp Duty whereby a young farmer(<35 years old) with the appropriate qualifications (minimum Level 6 Certificate in Agriculture) can get full relief from stamp duty; As with some of the other reliefs there are conditions applying to the young farmer as to the length they must hold onto the asset and also that they must remain classed as a farmer for a period after availing of the relief.

CURRENT STAMP DUTY RATES

Stamp Duty rates on land and buildings

Type of property	Consideration	Rate of Stamp Duty
Residential	First €1 million	1%
Residential	Excess over €1 million	2%
Non-residential	-	2%

SUMMARY OF THE MAIN FEATURES OF THE CAPITAL TAXES

	Capital Gains Tax	Capital Acquisitions Tax	Stamp Duty
Current Rate	33%	33%	2% - non-residential 1% - residential €1m; 2% on excess
Who is liable?	Donor (the giver)	Donee (the receiver)	Recipient
What assets are taxable?	All capital assets – including land, buildings, payment entitlements	The value of all gifts/ inheritances where cash or equivalent benefit does not pass back to the donor (giver)	Assets that are transferred via a stampable instrument – land, buildings by means of gift or sale only (No SD on inheritances)
Reliefs available	• Annual Exemption • Indexation Relief • Retirement Relief	• Small Gift Exemption • CAT Thresholds • Agricultural Relief	• Consanguinity Relief • Young Trained Farmer Relief
Key dates for payment and making a return	Payment by 15th December or by the following 31st January Return due by 31st October	31st October	Return filed and payment due within 30 days of date of execution of transfer

RIGHTS OF WAYS

WHAT DOES THE TERM RIGHT OF WAY MEAN?

- A right of way arises if you own a piece of land and in order to get to it you must pass over a piece of land or roadway which is owned by someone else

ARE THERE DIFFERENT TYPES OF RIGHTS OF WAY?

- Rights of Way established by long use
- Rights of Way created by a document

RIGHTS OF WAY ESTABLISHED BY LONG USE

- Many rights of way were created when a land owner used a piece of land, lane or private road, which belongs to another person, over a long period of time, to get to his property. The main test to prove a right of way was the continuous use of the land for twenty years or more.

RIGHTS OF WAY CREATED BY AGREEMENT

- This situation arises when two land owners get together and agree that a right of way should or needs to be granted to allow one of them to access a piece of property which is landlocked.

HOW LONG DOES IT TAKE TO ESTABLISH A RIGHT OF WAY?

- These are by far the more difficult ones. The Land Law and Conveyancing Act 2009 changed the old way of establishing a right of way which was that you had to prove a certain amount of right; in the Courts view 20 years. This method led to difficulties so the 2009 Act tried to simplify the area of rights of way. Since the 2009 Act a person can claim a right of way if s/he can prove that s/he had possession for 12 years.

- *"Under the Land and Conveyancing Law Reform Act 2009 a person had to make a claim for a right of way within 3 years of the introduction of the Act. This could not work in practice as the requisite 12 years would not have passed.so an amending piece of legislation was introduced – the Civil Law (Miscellaneous Provisions) Act 2011."*

- The person who is establishing the right of way must be a user as of right; you have to prove permission and consent by the owner of the laneway etc. to the person who wishes to use it to access his own property. The law helps out by presuming consent where you show continuous use for more than 12 years.

WHAT SHOULD I DO TO MAKE SURE I DON'T LOSE MY RIGHT OF WAY?

- If you access your property by using a right of way over another person's land you need to make sure that that right of way is registered with the Property Registration Authority (PRA).

- Deadline for registration is the 30th November 2021

HOW DO YOU GO ABOUT REGISTERING A RIGHT OF WAY THAT HAS BEEN USED FOR MANY YEARS?

- An affidavit must be sworn by the person claiming the right of way setting out as much detail as possible about the right of

way, how and when it is used, the details of the land over which it is exercised and the name and address of the person who owns the land. You must also provide the land Registry with a map identifying the right of way. The fee payable to the Property Registration Authority is €25.00.

- The PRA will then notify the owner of the other property concerned and, once the application is not contested, the right will be registered.

- If the right of is contested then the parties will have to use a different procedure, which involves an application to the Court seeking a Declaration confirming the existence of the right of way – essentially the court determines whether or not the ROW exists and if it is proven to exist the person claiming the right of way can then go to the PRA to seek its registration.

SEEK ADVICE AND TAKE ACTION

- If you are a land owner using a right of way you should look for advice to make sure that your long-established rights of way are not lost. Title documents should be checked at the earliest opportunity to find out if your right of way needs to be registered – if you don't do something in time you could lose a valuable asset.

PRENUPTIAL AGREEMENTS - PROTECTING THE FAMILY ASSETS

WHAT IS A PRENUPTIAL AGREEMENT

- A Prenuptial Agreement is made by a couple who intend to marry. It makes clear their rights to any property, debts, income and other assets, which may have been bought or acquired during the relationship. The agreement sets out how the parties will divide their assets. It also deals with their finances upon Divorce or Judicial Separation. As well as property and assets, an agreement can deal with other issues. These may include succession rights, children, custody access, maintenance, and pensions.

WHY MAKE A PRENUPTIAL AGREEMENT?

- A Prenuptial Agreement is made to avoid disputes when a couple is splitting up. Irish law allows the Family Law Courts to deem all assets of a married couple as mutual. Unless otherwise protected they may be placed into a shared pool and divided accordingly.

WHO ENTERS INTO PRENUPTIAL AGREEMENTS?

- Prenuptial agreements are not only for the rich and famous. We often make agreements for people from many financial backgrounds. Ordinary couples use Prenuptial Agreements to protect their assets

ARE PRENUPTIAL AGREEMENTS ENFORCEABLE?

- Prenuptial agreements are not illegal or unenforceable in Ireland.

  An Irish couple is not prohibited from signing a Prenuptial Agreement in Ireland. However, the Irish courts do not have to

enforce such agreements if the couple's relationship later breaks down. Therefore, it is crucial that you speak to us. This will allow us to prepare a prenuptial agreement. It will contain all the right components to best protect your interests.

WILL PRENUPTIAL AGREEMENTS BE RECOGNISED IN THE FUTURE?

- It can be said that such agreements provide peace of mind. It is thought that the Courts may take Prenuptial Agreements into account as one of the factors to be considered when determining financial relief on separation or divorce

CO-HABITATION AGREEMENTS

WHAT IS A CO-HABITATION AGREEMENT?

- A Cohabitation agreement is an agreement between two cohabitants. It provides for financial and other matters during their relationship or at the end of the relationship (whether on death or otherwise)

WHAT IS THE MAIN DIFFERENCE BETWEEN A PRENUPTIAL AGREEMENT AND A COHABITATION AGREEMENT?

- A prenuptial agreement is entered into pre-marriage. A cohabitation agreement is entered into by parties who are not married, don't intend to marry, but live together. It is now vital

for cohabiting couples to give thought to a cohabitation agreement, keeping in mind the effects of the Civil Partnership Act 2010

CAN ALL COHABITUATING COUPLES DRAW UP A COHABITATION AGREEMENT OR ARE THERE CONDITITONS?

- Anyone can enter into a cohabitation agreement. Legal advice should be sought to make sure one party isn't being forced to enter the agreement. Lynch Solicitors are one of Ireland's leading family law practices. We provide a full range of family law services and have been doing so for over two decades

WILLS

WHAT IS A WILL?

- A Will is a legal document detailing how someone's possessions should be divided after their death.

- In other words, a Will is directions for family and friends as to how to deal with possessions after a person's death. It is a personal decision about who should receive your assets.

- There is no obligation to disclose the fact that a Will has been made or indeed the contents of the Will. It is up to every individual to decide whether or not they want to discuss the contents of the Will with family members.

- It is, however, advisable to inform Executors of the whereabouts of the Will and might be useful to discuss your wishes with your family.

CAN A WILL BE CHANGED?

- A Will can be changed at any time or as many times as you wish.

- We recommend that a person regularly review their Will.

CAN I SELL OR TRANSFER MY PROPERTY AFTER I HAVE MADE MY WILL?

- A Will only takes effect on death.

- The fact that a person has made a Will does not prevent them from dealing with property after the Will is made - houses can still be sold and money in the bank can be spent.

SHOULD I TRANSFER PROPERTY BEFORE I MAKE MY WILL?

- Transferring your family home into joint names can be a good idea as the property automatically passes to the surviving co-owner without having on death.

- Transfers between spouses are also exempt from Stamp Duty, Capital Taxes.

WHEN SHOULD A WILL BE MADE?

- becoming property owner or inheriting assets
- in contemplation of marriage
- going abroad
- getting divorced or separated
- having children

- retiring, getting older or suffering illness

NOW! As they say there is no time like the present!

WHY SHOULD SOMEONE MAKE A WILL?

If you don't plan it, it may not happen as you would like!

- You decide what is to happen to your property after your death. If you don't , the law dictates that your property is distributed amongst your closest relatives.

- Many people like to make gifts or bequests of money or of personal belongings to friends or relatives. These can be included in your Will, no matter how big or small.

- You can choose who is to carry out your wishes by appointing executors. The law says that you need to name one executor but it is advisable to appoint two executors.

- It makes it easier for friends and family if their loved one leaves a Will.

WHAT IS AN EXECUTORS JOB?

- The main duty of the Executor is to collect and then give the assets to those entitled.

- When a person passes away property transfers by law to their Executors.

- The Executor has a duty to protect this property for the beneficiaries - e.g. insuring house and contents.

- The Executor is also obliged to pay the funeral expenses and debts of the deceased.

WHO SHOULD I APPOINT AS EXECUTORS?

- Persons who are willing, capable, trusted and resident in Ireland
- Many people appoint family members or their solicitor as executors. The main consideration is that you trust the person appointed to carry out the duties properly.
- There is nothing to prevent a family member, who may also be due to benefit under the Will from being appointed as an Executor benefit under the Will from being appointed as an Executor.
- An Executor (other than a professional executor) is not entitled to get paid or profit from the role but they are entitled to recover any reasonable expenses during the administration of the estate.
- It is advisable to inform someone if you chose them as your Executor.

GUARDIANS / TRUSTS & TRUSTEES

- Guardians are the day to day carers, Trustees are the financial managers.
- Parents may choose the same people to act as **Guardians, Trustees & Executors**.
- It is of utmost importance that the chosen guardian will put your child's best interests first.
- Trusts are a good way to provide for minor children, children with special needs or children with disability. If a number of children are in the trust the trustees can chose to benefit one child over another.

ENDURING POWER OF ATTORNEY

WHAT IS AN ENDURING POWER OF ATTORNEY?

- If someone becomes incapacitated through disability, illness or a progressive degenerative disease their assets become frozen. To avoid this situation a person, while in good health, should create an Enduring Power of Attorney (EPA). This a legal document which only takes effect in the event that that person becomes mentally incapacitated. The person creating the EPA is known as the Donor and in the event of hi/s her incapacity power to deal with the Donor's money and assets transfers to the Attorney.
- The Donor is not prevented from dealing with his/ her money and assets by creating the EPA, this only happens if the Donor becomes mentally incapacitated.

POWERS

- An EPA can be very specific, e.g. give the Attorney a particular task to carry out like the sale of property or management of bank accounts.
  The other type of EPA would be very general and virtually entitle the Attorney to do everything that you would do yourself, with your money and property. Importantly this second type of EPA will also enable your Attorney to make "personal care" decisions e.g. where the Donor lives, whom he should see and not see, diet and dress.

WHO CAN BE APPOINTED AS ATTORNEY?

- You can appoint anyone you wish to act as your Attorney e.g. spouse, family member or a friend. You can also appoint more than one person. The choice of Attorney is a personal matter

buta good deal of thought needs to be given to the nomination. You need to ask yourself is this person suitable for the job? Are they trustworthy and do they have the skills to manage my affairs and make decisions for me?

WHAT IS THE PROCEDURE FOR CREATING AN EPA?

- The procedure for the creation of an EPA is complex. You will have to consult your Solicitor and your Doctor. Your Solicitor will prepare the documentation for you after consultation with you and deciding whether a specific or general Power of Attorney is more suited to your needs

Amongst the paperwork that needs to be completed in order for the Power of Attorney to be valid are:

- A statement from your Solicitor that you understood the effect of creating the Power of Attorney

- A statement from your doctor confirming that you had mental capacity to understand the effect of creating the Power of Attorney

- A statement from you that you understood the effect of creating the power

- The process also requires your Solicitor to notify two family members that you have made the Power of Attorney.

WHAT HAPPENS IF I CHANGE MY MIND?

- The EPA can be revoked at any time before it is registered. If you change your mind about having an EPA or about your choice of

Attorney you should consult your Solicitor immediately. Your Solicitor will advise on the process of revocation of the EPA.

REGISTRATION OF AN EPA

- The Attorney must apply to the High Court for registration of the EPA if the Donor becomes mentally incapacitated. The Court will require him/her to produce medical evidence of the Donor's incapacity and notice of the application to register the EPA must also be served on the Donor and the same two persons that were notified of the creation of the EPA.

- Once the EPA is registered the Attorney can lawfully act on the Donor's behalf.

- An Enduring Power of Attorney is as important as your Will, but many people place more emphasis on the latter. The Enduring Power of Attorney will prevent a situation arising where money assets become frozen as friends and family members struggle to cope with the stresses and demands that illness will foist upon them.

FOR MORE INFORMATION

Tel: 052- 612 43 44

Address: Jervis House,
Parnell Street,
Clonmel,
Co Tipperary

Email: info@lynchsolicitors.ie

Website: www.lynchsolicitors.ie

www.twitter.com/LynchSolicitors

www.facebook.com/LynchSolicitors

www.linkedin.com/company

ATTENTION

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