

A Client Guide to Flexible Wills (those
with a Nil Rate Band Discretionary
Trust or “NRDT”)

A Tax Planning Flexible Will

Note: This Client Guide has been updated since the Finance Act 2008

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From



Probate Tax & Trusts Department

*Please remember that legal, and taxation, matters are complex and you should not take any action, or inaction, just from reading one of **Thursfields' Client Guides**. You should discuss this with us first. This Client Guide only applies to Wills made in England and/or Wales and reflects Thursfields understanding of the law (in England and/or Wales) as at the date of this edition of this Client Guide.*

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Flexible WILLS and a Nil-Rate Band Discretionary Trust ("NRDT")

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Mr and Mrs Client's Estates
 They have two children who each have two children. So there are four grandchildren. Total Estate, say, £724,000.

FIRST DEATH

SECOND DEATH

The Nil Rate Band Discretionary Trust (NRDT) is established

1. Up to **£312,000** (the current Nil Rate Band for IHT) (from **6th April 2008**) (it is proposed that this will increase to *£325,000 from 6/4/2009 and to £350,000 from 6/4/2010*) is put into the NRDT.
2. The Trustees can pay, or not pay, Income and/or Capital of Trust as they think best. The Trustees choose between the beneficiaries listed in the NRDT (usually the surviving spouse + children + grandchildren).
3. To ensure ease of administration the "debt" powers may be used.
4. On death of the surviving spouse the NRDT can be brought to an end (and if so the £312,000 is shared out between the children and/or grandchildren) **OR** if the beneficiaries wish the NRDT (or even part of the NRDT) can be continued with assets left in trust for children and grandchildren.
5. The balance of the estate is (usually) paid to the surviving spouse.
6. Advantage of **flexibility**.

(Residuary) Estate of surviving Spouse

1. A NRDT is not (usually) created in this estate.
2. The Residuary Estate, of £412,000 in this example (£724,000 less £312,000), would usually be divided equally among the children (see below).
3. If a child has died then his/her share would in turn be divided equally between their own children (at, say, age 21).
4. **NB:** the Trustees of the NRDT would probably consider if it was now appropriate to bring the NRDT to a end (and if so how the £312,000 is shared out between the children and/or grandchildren) **OR** if the beneficiaries wish the NRDT (or even part of the NRDT) can be continued with assets left in trust for children and grandchildren.
5. In this example IHT would be payable on £100,000 (£412,000 **less** £312,000) at 40%. Total IHT is therefore £40,000.
6. Beneficiaries receive £684,000, in total (£724,000 **less** IHT of £40,000).

½ to each child

½ to each child

½ to each child

½ to each child

CHILD 1

CHILD 2

½ to each grandchild

½ to each grandchild

½ to each grandchild

½ to each grandchild

GRANDCHILD 1

GRANDCHILD 2

GRANDCHILD 3

GRANDCHILD 4

or ¼ of total

or ¼ of total

or ¼ of total

or ¼ of total

So, achievable IHT savings of £124,800.00

Summary of the Inheritance Tax ("IHT") background

The traditional way of saving Inheritance Tax for a married couple was to ensure that **each** spouse had in their sole name assets at least to the value of the then lifetime exemption, or the "**Nil-Rate Band**" (or tax threshold) currently **£312,000** for deaths on or after the **6th of April 2008** (increased from £300,000) (*it is proposed that this will increase to £325,000 from 6/4/2009 and to £350,000 from 6/4/2010*). This is usually called **the equalisation of estates**.

The spouse who died first would then leave a legacy equivalent to the then nil-rate band directly to his/her children or grandchildren. So for married couples this will mean that between them they will have lifetime exemptions totalling **£624,000** (that is to say two (2) lifetime exemptions each of £312,000 {increased from £600,000}). The drawback of this type of legacy is that the surviving spouse loses the use of those assets, and the income from those assets, for the rest of his or her lifetime.

If you gave the surviving spouse the use of those assets for life this meant that the surviving spouse would receive the income for the remainder of his/her lifetime and on his/her death those assets would go to the children or grandchildren. HM Revenue & Customs (HMRC) call this type of trust (which can only be made in a Will) **an Immediate Post Death Interest (an IPDI)** (what we used to call a life interest trust or HMRC called, for IHT purposes an **Interest in Possession Trust**). However, for IHT purposes whilst on the first death there would be no liability to IHT (as there is no IHT on gifts between spouses), on the second death, in effect, the liability to IHT was exactly the same as if the surviving spouse had been given those assets absolutely. The two estates would **aggregate** (as it is called - so for IHT purposes the estates are added together) for the purpose of calculating the IHT due on the second estate though each estate pays their proportion of the IHT that is calculated.

A Possible Solution - A Nil Rate Band Discretionary Trust ("NRDT") - A Tax Planning Flexible Will

In order to get over the disadvantages of both methods of approach consideration should be given to granting a NRDT in the Will of the first spouse to die. This would usually mean that these provisions would be included in both spouses Wills, as it would not be known which spouse would be the first to die.

On the first death, usually, up to the current nil rate band (currently £312,000) would be placed in a **Discretionary Trust** (what HMRC now call a **Relevant Property Trust {RPT}**). There is no IHT to pay on the creation of this trust in the Will of the first spouse to die (so the Discretionary Trust does not need to be set up in your lifetime). The surviving spouse can be a Trustee of the Will and also can be one of the beneficiaries of the Discretionary Trust. There must be more than one beneficiary of a Discretionary Trust as otherwise there could not be any "discretion" to decide who is to have the income and/or capital and the IHT advantage would then be lost. The balance of the estate of the first spouse (if any) is then paid to the surviving spouse unconditionally.

The advantage of a Discretionary Trust, from an IHT point of view, is that no beneficiary "owns" the assets of the Discretionary Trust. You do not have the problems we have outlined, above, of an Interest in Possession trust. So on the second death the assets of the Discretionary Trust are not added to estate of the second spouse to calculate the IHT payable on the second estate. This assumes that the trust has been run truly as a Discretionary Trust since the first death. So, if say, the surviving spouse was always paid all of the income and had the use of all of the capital (say because it was a share of the family home) then the HM Revenue & Customs (HMRC) Capital Taxes might challenge this, after the second death, by seeking to establish that the trust was not a Discretionary Trust but was in fact an interest in Possession trust.

We have included a diagrammatic example, on page 2, of how the NRDT might work. Some clients have found this easier to follow with the help of the explanation, as above.

A NRDT will not have the same IHT advantages, unless there are business or agricultural assets, if a couple are not married. Please remember that if business property relief or agricultural property relief is available then the "true" value of the assets that can be placed in the NRDT on the first death can be much higher than £312,000.

The wording of the NRDT that Thursfields use includes:-

Maximum Nil Rate Band after IHT reliefs

Thursfields NRDT is worded to give the maximum nil-rate sum after allowing for any IHT reliefs (which might be available particularly on business or agricultural property). Your Will would not then need to be altered if the nil rate band was increased.

"Flexible" Size for the NRDT

We suggest that your Executors (or Trustees) should be entitled to decide:-

- to establish a NRDT for the full nil-rate band, **or**
- not to establish a NRDT, **or**
- to make the NRDT for more than the nil rate band so that there would be an immediate liability to IHT at that time.

Thursfields wording allows the Executors to, in effect, look at the IHT provisions that apply on the first death to work out the figures again more accurately. The reason for having a power to pay more than the nil-rate band is unusual but if, say, in the future, IHT changed so that we went back to Bands of Tax, so that the maximum rate of IHT was, say, fifty per-cent, then it may be better to pay a small amount of IHT on the first Estate to save a considerably larger sum on the second Estate. This was often the position with Death Duties years ago.

Time Limit for making decisions as to the size of the NRDT

With Thursfields' wording the decision as to the size of the NRDT must be made within two (2) years of the date of death. This is to enable the Trustees to make these decisions within the specific time limit allowed for Deeds of Variation which is two years from the date of death.

Can you, however, still decide not to set up the NRDT?

With Thursfields' wording we have always included the power to the Trustees to decide not to set up the NRDT, at all. This makes it easier to make that decision if you want to. Not all Wills with NRDTs have this option.

A discretion for making decisions as to what each beneficiary receives

A major advantage of a NRDT is that, effectively, the decision as to who receives the capital and income of the NRDT can be decided in the Trustees own time. Their choice of which beneficiaries are to receive these monies would be made by the Executors from a list included in your Will. Thursfields wording allows you to nominate additional beneficiaries to your Trustees, or to Thursfields, in your lifetime.

You can also (unless Thursfields usual wording is changed):-

- nominate further beneficiaries to your Trustees in your lifetime (without changing your Will)
- leave for your Trustees a **Letter of Wishes** which can include your more detailed wishes as to how you see these discretions should be applied in your NRDT. This **Letter of Wishes** can always be changed to reflect your current circumstances (see below also).

Your Spouse's position

However, to obtain the most flexible position, whilst the amount of the legacy is to be decided within two years, the intention is that this clause will continue on a full discretionary basis for the future, but that it would be brought to an end at a time that the Trustees decide. This may be some time after the surviving spouse has died. Usually it would be the case that the intention would be that the surviving spouse would receive the use of the capital and income of the assets in the Discretionary Trust for his/her lifetime. However, the important consideration is that this is not necessarily the case, as it is a full Discretionary Trust. The Trustees would look periodically (say at least annually) to decide on the choice of which beneficiaries are to receive these monies, again, from a list included in your Will.

Power to create a debt or loan

We have included in our standard wording for the NRDT the ability for your Trustees to create a debt or charge instead of holding in the NRDT, say, cash or property. This power is of most use when there is a surviving spouse. This is a more recent suggestion to provide yet more flexibility.

A Letter of Wishes

We suggest that you cover, in your own words, in a **Letter of Wishes** all of these matters which you wish your Trustees to take into account when exercising their discretion. This would usually cover most of the matters we

mentioned in the previous paragraph. A Letter of Wishes also, of itself, adds more flexibility in that you can always add to, or replace, such a Letter of Wishes at any time. The wording that **Thursfields** usually use would even allow you to verbally notify your Trustees, or **Thursfields**, as to any amended wishes.

Some clients like to use a NRDT's Letter of Wishes to include legacies of cash sums to be paid from the NRDT when the surviving spouse dies (so these would be payable on the second death). If this adopted then the legacies can be changed merely by altering the Letter of Wishes. This could be quicker and more flexible.

Please remember that such a Letter of Wishes is, strictly, **not** legally binding on your Trustees. If it were legally binding then it would not be a NRDT (as there would be no discretion).

Appointment of further Trustees

If a Trustee dies then, usually, it is the current Trustees who jointly have to agree on the appointment of new Trustee(s). In **Thursfields** wording for the NRDT this power is expressly reserved to the surviving spouse only during his/her lifetime.

IHT advantages

As there is no legal entitlement for the surviving spouse to receive the capital or income, then on the death of the surviving spouse these assets do not get added to the surviving spouse's Estate for the purpose of working out the IHT liability on his/her Estate. The effect is therefore to reduce the IHT liability on the assets owned by both spouses eventually. If the married couple have more than £624,000 worth of assets, then the effect would be to save the IHT liability on 40% of £312,000 (the nil rate band on the first spouse to die if he/she die on or after the 6th of April 2007) which is a Tax saving of **£124,800**

How would the NRDT (on the first death) work

This assumes that your Executors (who may be Trustees by the time this is put into effect) have decided:-

1. to establish an NRDT, on the first death, **and**
2. to put into the NRDT assets (belonging to the first of you to die) which together add up to a total which is the equivalent of the Nil Rate Band (currently £312,000). (Please note that you do not need to decide when you make your Will what assets are to go into the NRDT).

Your Executors will need to meet periodically whilst the NRDT is running so that any changes due to legislation, including tax legislation, can be considered, the NRDT's investments can be reviewed and so on. Thursfields will be able to advise you about what is required at the time.

So once the Executors have decided to establish the NRDT and allocated assets equivalent to the Nil Rate Band your Executors then need to decide how to run the NRDT. In practice, on the first death, your Executors, have three main ways the NRDT could be put into effect. These could be used in combination of course. These three main ways are as follows:-

Option A - To establish the NRDT but to run it as a "traditional" Discretionary Trust

If Option A is adopted then the Executors will retain and invest the assets allocated to the NRDT. As this is a discretionary trust the Executors will meet periodically to decide who will be paid the income and if so in what percentages or proportions and to which beneficiary or beneficiaries or whether the income will be saved (or reinvested) that year. Similarly the Executors will meet periodically to decide if they want to pay out any capital from the NRDT and if so what sum or sums and to which beneficiary or beneficiaries.

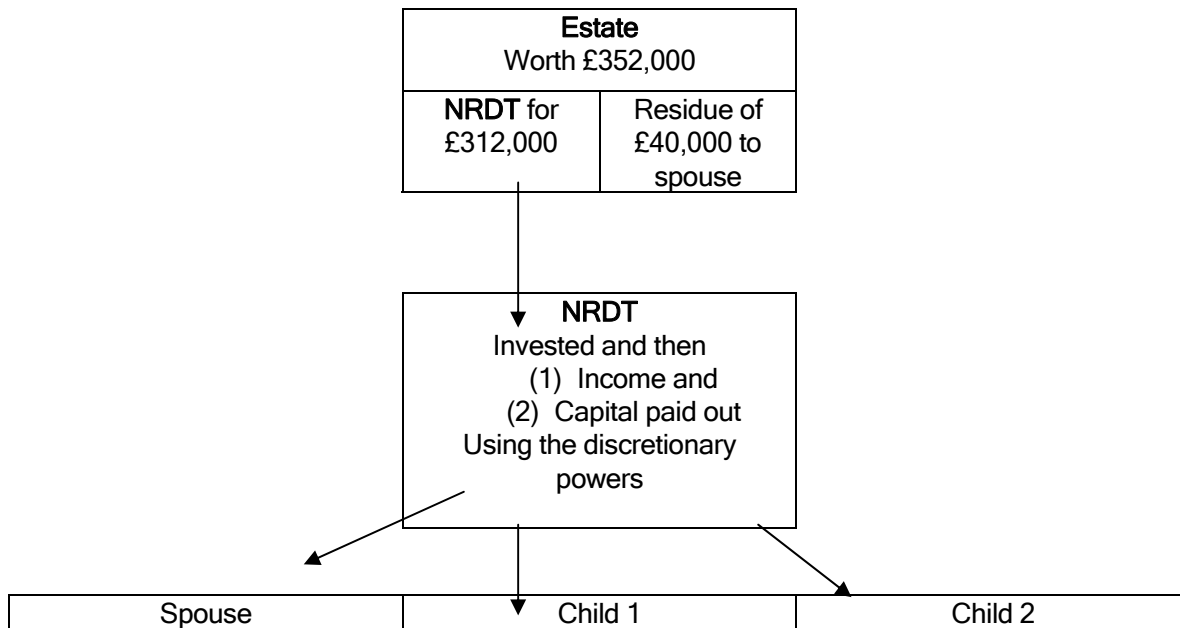
The running costs of running an NRDT as a traditional (discretionary) trust will need to be considered including how to invest the capital and completing Trust Income Tax Returns. The income tax calculations for the NRDT may well be much more complicated.

If the income from the NRDT is only ever paid out to the surviving spouse then the Revenue may well want to argue that in practise this has been run not as a discretionary trust but as a Life Interest Trust (what the IHT legislation calls an "Interest in Possession" Trust) which if the Revenue was successful would mean that all the IHT benefits would be lost.

On the second death the NRDT, probably, would be brought to an end and the assets distributed between your family. The powers to distribute capital (on the second death) are the same powers as those to be used during

the running of the NRDT.

So a diagrammatic view of **Option A** could look something like this:-

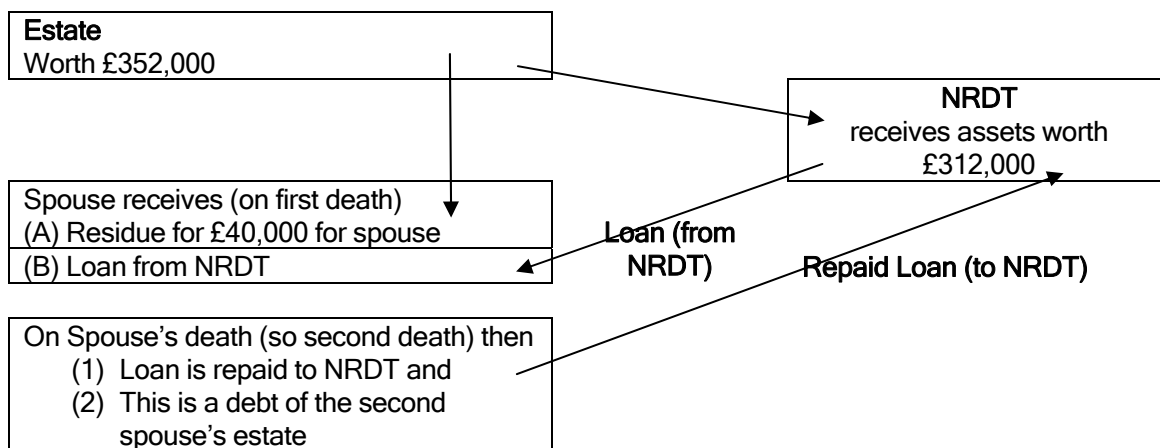


Option B - To establish the NRDT but to use the “debt” or loan powers as above

If **Option B** is adopted then the Executors will use one of the other powers that they are given to the Executors by the wording of Thursfields NRDT Wills. This means that when the NRDT has been established, and assets have been allocated to the NRDT (which might include the deceased’s part share in a house), then the Executors can decide to lend those assets to one or more of the potential beneficiaries which could be for the surviving spouse. Under this Option the assets, all of them or part of them, can be lent to that beneficiary or beneficiaries.

If a part share of the assets placed in the NRDT was a part share in a property as that is being lent back (under Option B) then if the surviving spouse wanted to move house this would affect the NRDT as they hold a loan, not the part share of the house.

So a diagrammatic view of **Option B** could look something like this:-



Option C - To establish the NRDT but it takes a mortgage

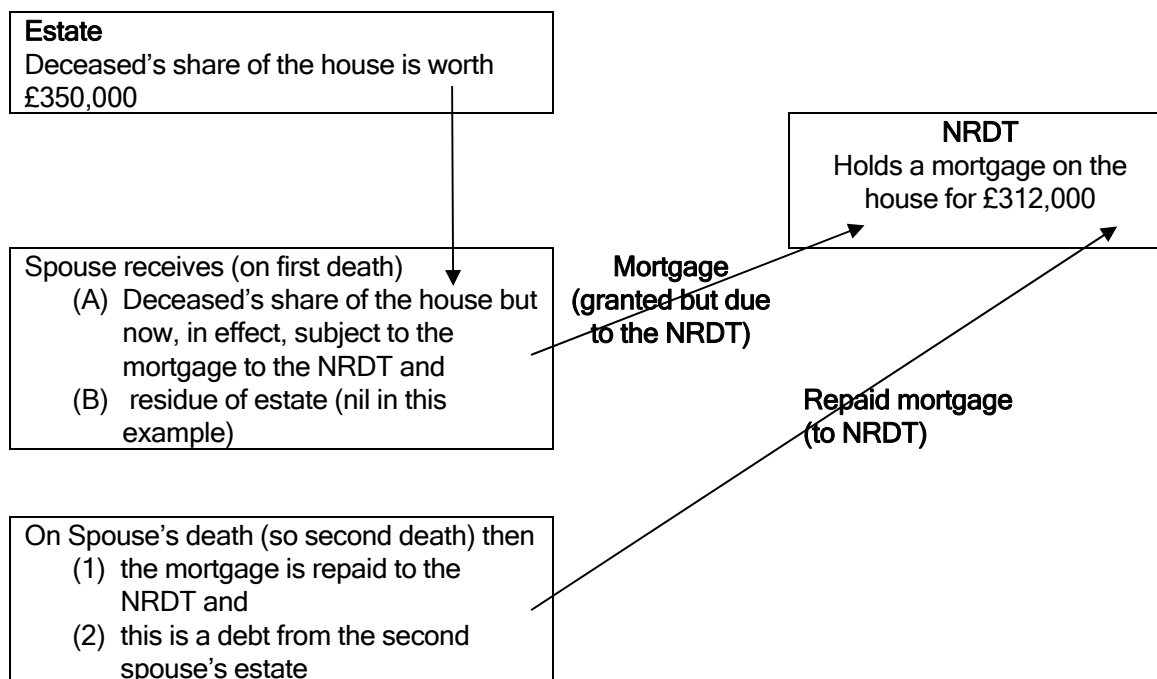
Option C is useful where there may not be liquid assets in an estate and it is especially useful where, say, the main asset is a property worth well over two nil rate bands, so a property worth more than £624,000, so that a half share in the property is worth more than £312,000.

So, for example, where the couple have a property worth, say, £700,000 (held as tenants in common) but no

other assets. So the only asset in the estate, in this example, is a half share of the property. If you place a half share of a property into a NRDT and the Executors allow the other spouse (the other co-owner) to live in the property then it is likely that the Revenue will (putting this simply) seek to challenge that kind of arrangement on the basis (as mentioned above) that this is in practice an IPDI (or a Life Interest Trust).

The loan powers are not necessarily so useful here, for various reasons. But with the wording for the NRDT that Thursfields use a further option is for the Executors to take into the NRDT not the house but a mortgage on the house equivalent to the Nil Rate Band (which is currently £312,000). So the mortgage (on the asset) is taken by the NRDT rather than the asset itself. So the NRDT does own a share in the property but holds a mortgage. This can, in the right circumstances, be a better solution than Option B. When the house is sold, say on the surviving spouse's death, then the mortgage would be paid off. If, say, the surviving spouse wishes to move house then the Trustees of the NRDT will need to consider what to do at that time but they could move the mortgage to the "new" property.

So a diagrammatic view of **Option C** could look something like this:-



Whilst we have tried to show these three Options by means of diagrams this, inevitably, cannot show all the ways these flexible arrangements could be used to cover **your** requirements and to suit **your** circumstances. The arrangements to suit you would need to be developed with you following our specific advice about your circumstances following the first death.

Other advantages of a flexible tax planning Will with an NRDT

These advantages are set out in no particular order of importance and this is not meant to be a comprehensive list. These include the following:-

1. Flexibility

A NRDT allows for **flexibility**. Your Trustees have the inbuilt provisions to be able to adapt your Will, in effect, to meet the circumstances when you die and during the lifetime of the NRDT. A beneficiary does not "own" his, or her, share of the assets of the NRDT this can be very useful to act as a shelter for those assets. This means that your Trustees can adapt to changing circumstances. If you do not have an NRDT then your Trustees must carry out what you have set out in your Will as they do not have, for example, the power to change the directions in your Will. So you have to make your Will now to come into effect at some point in the future.

A flexible tax planning Will like this means your Trustees are then able to cope with any changes to tax legislation (in particular IHT) that may have been introduced between when you made your Will and when you die.

2. Care Home Fees

The assets in the NRDT are not owned by the surviving spouse. So if the surviving spouse should have to go into a Care Home the assets are not included in the calculation of the spouse's financial assets (as they belong to the NRDT). So the assets can be "protected" from having to pay for Care Home Fees.

3. Protection for disabled children or grandchildren

If any of your children and/or grandchildren are, or become, disabled then the NRDT provides the flexibility of looking after their monies. As they do not own those assets (see point 2 above) then they are not taken into account for that child's or grandchild's means tested benefits.

3. Protection for your children or grandchildren's "entitlement" if they are being divorced

If any of your children and/or grandchildren are being divorced when you die then as they do not "own" their "share" of the NRDT there is greater protection from their divorce settlement.

4. Protection if your Spouse remarries or if your Civil Partner enters into another civil partnership

If the surviving spouse remarried then the assets in the NRDT would still pass, eventually, to your children and grandchildren. The surviving spouse does not own those assets.

5. Power to resettle the assets in the NRDT

The Trustees have power to "resettle" any of the assets in a further trust or trusts. This could be used, for example, so that part of the assets in the NRDT are placed into a "new" Discretionary Trust just for grandchildren. On any such resettlement this is not being carried out by your children but by your Trustees which can have its own IHT advantages.

6. Further IHT planning using business assets and/or agricultural assets

If business assets are placed into the NRDT then there may be further IHT planning that can be put in place. Often there use the benefits of "business property relief" or "agricultural property relief" for IHT (see Thursfields Client Guide on Inheritance Tax for more details about these two reliefs). Having the monies held in a NRDT often provides for flexibility for the future.

7. Hold Over Relief for Capital Gains Tax (CGT)

As with any Discretionary Trust CGT will be available on capital leaving the NRDT (which is just another type of Discretionary Trust) if the appropriate elections are made. However with the way most NRDTs work in practice (mainly having assets on which IHT is not payable) this is not usually a great benefit.

Disadvantages of a Tax Planning Will with a NRDT

These disadvantages are set out in no particular order of importance and this is not meant to be a comprehensive list. These include the following:-

A 10 Yearly Anniversary IHT charge on a Discretionary Trust (the "periodic charge")

If a NRDT does in fact continue for more than ten (10) years then there is a possibility that the ten-yearly charge to IHT on a Discretionary Trust might apply (this is sometimes called "the periodic charge"). However, it is unlikely that there would be any liability on the first ten year charge, because the amount that went into the Discretionary Trust initially was the then Nil Rate Band. This charge applies each ten years. The current maximum rate of IHT that applies on any such charge is 6%

B Exit IHT charge on a Discretionary Trust

If a NRDT does in fact pay out any capital during its lifetime or when it is brought to an end then an **Exit Charge** to IHT is (potentially) payable (even if this is before the first 10 Year Anniversary). The then Nil Rate Band (whatever that value is at the date of the exit charge) is taken away from that revalued (market value) total of those assets as at the date of the exit charge. IHT is then paid on the balance, currently, at the rate of **0.6%** per year since the RPT was created or since the last 10 Year Anniversary Charge. So this would be, currently, a maximum IHT rate of 6%.

C Income Tax

Once the NRDT is established then Trust Income Tax Returns will need to be completed by, or for, the Trustees usually every tax year.

The Income Tax position for any Trust, including a NRDT, is more complicated. The usual rate of income tax charged on a NRDT is at **40%** (increased from 34%) from the **6th of April 2004**

If income is paid to a beneficiary then depending on the beneficiary's own income tax position then he, or she, can apply for an Income Tax repayment. A beneficiary has his, or her, personal Income Tax allowance which he, or she, can set against any tax paid by the Trustees. This will depend on the NRDT assets and how they are invested. Some investments do not have "income", for example a single premium bond from an insurance company so if there is no income then there would be no income tax, however there may be a liability to income tax on its encashment. If such a single premium bond is invested off shore then there will be no tax credit available to set against UK income tax when it is encashed.

From the 6th of April 1999 the taxation of income from stocks and shares received by a NRDT, as for any Discretionary Trust, has become much more complicated. From the 6th of April 1999 the tax credit on the dividends from stocks and shares will be no more and the effect was to make, first, the effective income tax rate higher and, second, that the calculation of the income tax more complicated, and third, it made it more difficult to decide who should be paying that extra tax. At the very least this (a) affected the way Trustees decide to invest the monies in a NRDT, and (b) increased professional fees payable for the tax returns, and tax work, due for the NRDT. Strictly speaking this is Schedule F type income where regardless of whether that income is accumulated or distributed the Schedule F trust rate applies and that Schedule F trust rate is **32.50%** (increased from 25%) from the **6th of April 2004**

D Capital Gains Tax

Any Trust, including a NRDT, has a smaller annual exemption for CGT. So for quite some time this has been one half an individual's annual exemption for CGT.

From the 6th of April 2004 all trusts will pay CGT on any gains at a rate of **40%** (increased from 34% - which had been the CGT rate for trusts since 6th of April 1998).

E Stamp Duty Land Tax ("SDLT")

SDLT was introduced to replace Stamp Duty on the 1st of December 2003. SDLT applies to land transactions. During 2004 whether SDLT applied to NRDT's was uncertain. The HMRC issued guidance on this area in autumn 2004. As a result of that guidance what seems to Thursfields to be the case is that SDLT does not apply to Option A or Option C above, but may apply to Option B depending on how that Option B is implemented. Thursfields will be able to advise you about this after how Option B is to be implemented has been decided.

If SDLT applies then the rates of SDLT are

	Residential in disadvantaged area	Residential outside disadvantaged area
Zero	£0 to £150,000	£0 to £125,000
1%	Over £150,000 to £250,000	Over £125,000 to £250,000
3%	Over £250,000 to £500,000	Over £250,000 to £500,000
4%	Over £500,000	Over £500,000

SDLT Examples =

- (A) if land valued at £125,000 was included in an NRDT which was liable to SDLT then the rate would be zero (or NIL) so SDLT would be **not** be payable
- (B) if land valued at £160,000 was included in an NRDT which was liable to SDLT then the rate would be 1%, so SDLT would be **£1,600**
- (C) if land valued at £250,000 was included in an NRDT which was liable to SDLT then the rate would be 1%, so SDLT would be **£2,500**
- (D) if land valued at £285,000 was included in an NRDT which was liable to SDLT then the rate would be 3%, so SDLT would be **£8,550**

So the difference between example (B) and (C) is some £5,750.

The point to bear in mind is that this is still small compared to the IHT that should be saved by adopting the NRDT strategy. The potential IHT saving is 40% of the Nil Rate Band of £300,000 (from the 6th of April 2007), which is **£120,000**

F Complications

A Discretionary Trust, in a Will, or made in your lifetime is more complicated. Your Will has more clauses to start with. Can you fully understand all that is included.

G The level of professional fees for running a NRDT

The professional fees for running such a NRDT would be higher, as for example Trust Income Tax Returns, would be required to be made each year. As the NRDT has been set up in your Will there are no other costs for creating the NRDT, apart from our fees in making your Will. We cannot say in advance what will be the level of professional fees as this will depend on:-

- the trust assets, **and**
 - how they are invested, **and**
 - which Option or Options (as above) are adopted by the Trustees, **and**
 - how often the investments need reviewing, **and**
 - how many beneficiaries are included in the trust, **and**
 - how frequently the Trustees need to meet (probably at least annually), **and**
 - what policy the Trustees decide about preparing Trust Accounts, **and**
 - how controversial, for whatever reason, are the Trustees decisions
- to name but a few of the important matters that can affect the level of professional fees.

H The "new" Spousal Nil Rate Band Transfer system

The Pre Budget Report 2007 on the 9th of October 2007 proposed the Spousal Nil Rate Band Transfer system. This is a new relief for IHT where for married couples, or civil partners, the second of them dies on or after the 9th of October 2007. This proposal was confirmed by the Finance Act 2008 which received Royal Assent on the 18th of July 2008.

In essence as we understand it this will work as follows:-

(A) On the first death (and the date of death is **not** important) you will need to ascertain whether the then Nil Rate Band (NRB) was used in that first estate. This will need to be worked out as a percentage.

Example 1 = So if H leaves 50% of his estate to W and 50% to his children then you have 50% to use on the second death (the unused percentage).

Example 2 = If H leaves all of his estate to W then you have 100% to use on the second death.

Gifts which have Business Property Relief or Agricultural Property Relief or gifts to charity will need to be taken into account as part of the new Spousal Nil Rate Band Transfer system.

(B) On the second spouse/civil partner's death which has to be on or after the 9th of October 2007 say the NRB was **then** £312,000 you will have to set against the second estate 100% of the NRB from the second estate **PLUS** a second sum which is the carried forward percentage from the 1st estate.

Example 1 = So in this example this was 50% of unused NRB in the first estate. So you would have another 50% of the NRB (£312,000 after 5th April 2008). So the second estate would have £468,000 (£312,000 + £156,000) to set against it

Example 2 = So in this second example this was 100% of unused NRB in the second estate. *So the second estate would have* another 100% of the NRB (£312,000 after 5th April 2008). So the second estate would have £624,000 (£312,000 + £312,000) to set against it.

In order to claim the Spousal Nil Rate Band Transfer a special claim form (Form IHT 216) will need to be completed and submitted to HMRC.

Thursfields' fees for completing a Tax Planning Will with a NRDT

If you are considering a NRDT Will then you will need **Thursfields Comprehensive Will Writing Service**. This Service includes, **first**, our charges for the specialist advice in IHT planning for you, **and secondly** making your Will(s) (which will often be more complicated, so needing additional drafting, due to implementing the IHT advice). IHT planning in this context includes advice as to **(1)** the most tax efficient method of drafting your Will(s) **and (2)** if you so require, other lifetime IHT planning.

Thursfields current charges for a Will prepared under our Comprehensive Will Writing Service are made up (as explained) of two elements:-

- (A) Thursfields charges for the IHT advice will be based on the hourly charge of the Fee Earner you consult prepared in the usual way, **and**
- (B) Thursfields charges for the Wills and other documents themselves.

Thursfields charges are likely to be a minimum of **£700:00 (including VAT)**. We can confirm this to you at our first Meeting if there should be any changes. Frankly, it all depends on what you want to do and on the complexity of your affairs. If this needs to be revised we will let you know. We reserve the right to send you an account for any abortive work for work carried out on your Wills and/or IHT planning for you.

If as a result of the advice we give you concerning your Wills we need to take action concerning the legal title of your property to place the legal title in your names as **Tenants in Common** (usually involving a Letter of Severance) then Thursfields Property Department will be dealing with this for you, and their charges may be incorporated into the above account but may be billed separately. We can confirm this to you at our first Meeting.

Thursfields current charges for this property work will be:-

- **£75.00 (including VAT)** plus any Search fees and Land Registry fees that may be required, if the legal title is registered, or
- **£30.00 (including VAT)** plus any Search fees and Land Registry fees that may be required, if the legal title is unregistered, **and**
- please note that these charges are for each property that we have to deal with which you need to hold as Tenants in Common.

The Finance Act 2006 and Trusts

The Finance Act 2006 introduced changes to the IHT taxation of many Trusts. These changes apply from the 22nd of March 2006. Basically the Finance Act 2006 made no changes the IHT treatment of existing discretionary trusts and made no proposals for any changes to the IHT treatment of future discretionary trusts.

Thursfields' advice therefore is that the strategy we have set out in this Client Guide can continue.

General Conclusion

Notwithstanding the drawbacks the overall IHT saving should more than compensate for any difficulties and/or other problems that might be incurred as a result of these matters.

Historical Nil Rate Band (or Tax Threshold) data

Date of IHT event on or between	Nil Rate Band (or Tax Threshold)	So two (2) Nil Rate Bands (or Tax Thresholds) amount to...
6 April 1990 and 5 April 1991	£128,000	£256,000
6 April 1991 and 9 March 1992	£140,000	£280,000
10 March 1992 and 5 April 1995	£150,000	£300,000
6 April 1995 and 5 April 1996	£154,000	£358,000
6 April 1996 and 5 April 1997	£200,000	£400,000
6 April 1997 and 5 April 1998	£215,000	£430,000
6 April 1998 and 5 April 1999	£223,000	£446,000
6 April 1999 and 5 April 2000	£231,000	£462,000
6 April 2000 and 5 April 2001	£234,000	£468,000
6 April 2001 and 5 April 2002	£242,000	£484,000
6 April 2002 and 5 April 2003	£250,000	£500,000
6 April 2003 and 5 April 2004	£255,000	£510,000
6 April 2004 and 5 April 2005	£263,000	£526,000
6 April 2005 and 5 April 2006	£275,000	£550,000
6 April 2006 and 5 April 2007	£285,000	£570,000
6 April 2007 and 5 April 2008	£300,000	£600,000
6 April 2008 and 5 April 2009	£312,000	£624,000

Date of IHT event on or between	Nil Rate Band (or Tax Threshold)	So two (2) Nil Rate Bands (or Tax Thresholds) amount to...
<i>The 2007 Budget proposed increased rates for future Tax Years as follows:-</i>		
6 April 2009 and 5 April 2010	£325,000	£650,000
6 April 2010 and 5 April 2011	£350,000	£700,000

Further Reading

Thursfields suggest you also may wish to read:-

- Thursfields **Client Guide** called **Inheritance Tax** which goes into more detail as to IHT. This may well contain other matters you may need to take into account.
- Thursfields **IHT Planning Checklist** which is to assist in making suggestions for your IHT and to provide bullet points for any meeting you have with Thursfields to discuss IHT planning.

You may wish to visit the Government Web Site for HMRC at www.hmrc.gov.uk

An explanation of legal words and/or terms commonly used in Trusts.

- **Accumulation and Maintenance Trust (or an "A & M" Trust)** - A specific type of Trust where income can be saved, rather than being paid out, so "accumulated" OR income (and/or capital) can be used (paid) for "education, maintenance or benefit" of the beneficiaries. For example only, "*monies are to be held for X until he is 25 years of age when he shall be entitled to them absolutely*". **Note:** The IHT benefits for gifts into new (lifetime) A & M Trusts ceased from the 22nd of March 2006. All existing A & M Trusts (at 21st March 2006) have until the 6th of April 2008 to comply with the Finance Act 2006 proposals and failing that they will then be treated as Relevant Property Trusts for IHT.
- **Bare Trust** - A simple kind of Trust, sometimes even a verbal trust. For example only, "*Executors agreeing that they hold property in an estate absolutely for the beneficiaries X and Y (in effect the Executors then hold that property as Trustees). So when that asset is sold then the sale is made for X and Y personally*". So this can be important, for example, for Capital Gains Tax reasons.
- **Beneficiary** - The name used for a person or organisation (e.g. a charity) who is to a benefit from a Trust (or an Estate).
- **Bereaved Minor Trust (BMT)** - A new definition for a specific kind of trust created in a Will or under the statutory trusts that apply on an Intestacy for children since the 22nd of March 2006.
- **Civil Partner & Civil Partnership** - The **Civil Partnership Act 2004** defines these terms for formal same sex relationships. The **Civil Partnership Act 2004** came into force on the **5th of December 2005**
- **Deed of Trust** - The name for a document (or deed) which establishes the Trust (usually used for a Trust created in your lifetime).
- **Discretionary Trust (DT)** - A specific type of Trust where income and/or capital can be saved, or paid out, as the Trustees decide for the beneficiaries. For example only, "*monies are to be held for X and Y and Z but the income can be saved or paid out between them equally or unequally and the capital can be invested and/or paid out to them equally or unequally*". So there may be IHT payable on assets passing into a DT, there will be a 10 Yearly IHT Anniversary charge to IHT and an Exit IHT charge on capital passing out of the DT.
- **Estate** - All your assets at the time of your death.
- **Executor(s)** - The person(s) appointed by you who are responsible for carrying out the instructions in the Will. You cannot have more than four (4) Executors. Normally Executors act unanimously, but very occasionally a Will allows for majority voting.
- **Hold Over Relief** - This is a Capital Gains Tax (CGT) election on assets passing into a DT or a RPT or leaving a DT or RPT. The effect of the Hold Over Relief is that anyone who then receives that asset takes it at the base value of the transferor of the asset not the market value at the date of the transfer.
- **Immediate Post Death Interest (IPDI)** - A new definition for a specific kind Life Interest Trust for a Spouse or Civil Partner since the 22nd of March 2006.
- **Interest in Possession Trust** - The term used for a **Life Interest Trust** that used to be used under the IHT legislation up to the 21st of March 2006.
- **Intestate** - When a person who dies without leaving a valid Will he/she is said to have died Intestate. Your Estate will then be distributed according to statutory rules known as the rules or laws of **Intestacy**.
- **Joint Tenants** - Where two, or more, people own a property (this could be any asset and includes a "building" type property) then when one of them dies his/her share in the property (usually this is an equal

share) passes (automatically under English Law) to the survivors the moment before he/she dies. This is a kind of legal fiction. **Note:** Compare and contrast the term **Tenants in Common** below (which operates in the reverse way).

- **Legatee** - The name used for a person or organisation who is left a legacy in a Will.
- **Life Interest Trust (LIT)** - A specific type of trust where income must be paid to the **life tenant** and when the life tenant dies the assets pass to the beneficiaries specified. For example only, "*monies are to be held for X who can use them for his lifetime and/or can have the income from them for his lifetime and when X dies they shall belong to Y.*" **Note:** The IHT benefits for gifts into new (lifetime) Life Interest Trusts ceased from the 22nd of March 2006. All existing LITs (at 21st March 2006) have until the 6th of April 2008 to comply with the Finance Act 2006 proposals and failing that they will then be treated as Relevant Property Trusts for IHT.
- **Nil Rate Band** - The amount, for a person, that is exempt from paying IHT on lifetime gifts or on death (see above).
- **Nil Rate Band Trust (NRDT)** - A Discretionary Trust included in your Will, which is equal to, or less than, the Nil Rate Band for IHT.
- **Perpetuities (Rule against)** - Under English Law a Trust cannot run indefinitely (unless for a charity). A Trust cannot have a fixed period which exceeds eighty (80) years. The possible term of the Trust is called the **perpetuity period**.
- **Related Settlement Rules (for IHT)** - When these apply they affect all trusts that are created on the same day.
- **Relevant Property Trust (RPT)** - A new definition for most trusts since the 22nd of March 2006. They are treated for IHT as similar to Discretionary Trusts. So there may be IHT payable on assets passing into a RPT, there will be a 10 Yearly IHT Anniversary Charge to IHT and an Exit IHT Charge on capital passing out of the RPT.
- **Residuary Estate** - All your remaining assets passing under your Will after all funeral expenses + debts + IHT and other taxes + any legacies (or other specific gifts) have been paid.
- **Tax Threshold** - Another name for the Nil Rate Band.
- **Settlor** - The correct name for a person who created a Trust (usually used for a Trust created in your lifetime).
- **Spouse** - Your husband or wife.
- **Tenants in Common** - Where two, or more, people own a property (this can only a "building" type property - so this does not include a cash asset) then when one of them dies his/her share in the property (which may be an equal share but this also be an unequal share) passes **not** to the survivors **but** instead passes under the terms of his/her Will (which may, or may not, leave this property to the survivors). **Note:** Compare and contrast the term **Joint Tenants** above (which operates in the reverse way).
- **Testator** - The correct name for a man who has made a Will (and Codicil - if any).
- **Testatrix** - The correct name for a woman who has made a Will (and Codicil - if any).
- **Trust** - Is the name for a binding obligation undertaken by people (that is to say the Trustees) for various (specified) assets on such terms, or conditions, stated by the Settlor (or Testator if in a Will) for a specified beneficiary or beneficiaries.
- **Trust Corporation** - A Trustee who is a company e.g. a Trustee Company of a Bank.
- **Trust Deed** - The name for a document (or deed) which establishes the Trust (usually used for a Trust created in your lifetime).
- **Trust Fund** - The generic term sometimes used for all the Trust Assets.
- **Trustee(s)** - They are people who have the responsibility to carry out the terms of the Trust. You cannot have more than four (4) Trustees. Normally Trustees act unanimously. Occasionally the Trust Deed allow majority voting.
- **Will** - A document containing a person's wishes on their death. This must comply with the statutory requirements for it to be a "Will".
- **Will Trust** - A "Will" which contains a Trust (usually an on-going trust).