



# The Society of Will Writers

## Business Property Relief - Common Traps



**Most business owners are aware of the generous inheritance tax reliefs that make assets**

**used in the business exempt, or partially exempt, from inheritance tax but there are some situations where the relief can be denied.**

The most common situation that can arise is where a small business is owned by a number of people and an agreement is entered into to allow succession of the business in the event of a death occurring before retirement. This agreement will normally stipulate that the deceased's personal representatives are required to sell their shareholding to the remaining shareholders who are also required to buy it.

HMRC however, view this as a binding contract for sale and, where such a contract exists, business property relief is not given. This problem can easily be avoided by ensuring that any agreement set up for a company grants an option to purchase and sell rather than making the transaction a contractual requirement.

The relief is also not available on family company shares if the company wholly or mainly deals in shares or securities, land or buildings or investments. HMRC apply a 50% test to the definition of 'mainly' which covers the capital employed, employee time, turnover, profits and the overall context of the business.

Finally, a business that is too 'cash rich' can be denied relief in relation to the cash on the

balance sheet at the date of death if it is considered that this is in excess of the amount required for the purpose of the business. To avoid this happening regular board meetings should be held and reasons for cash balances minuted such as for specified future investments or trading needs.

Care also needs to be taken when advising on lifetime gifts and the application of business property relief. The circumstances of the transferee must be taken into account as, if they die within seven years of the gift, it will be necessary to assess whether the relief continues to apply or whether the value of the gift will be charged to IHT. In order for the relief to be available the following must apply:

- The property has been owned by the transferee since the gift was made and until the death of the transferor
- The property is still classed as relevant business property

With a carefully drafted Will and appropriate lifetime planning your clients can ensure the maximum reliefs and benefits are passed to their families and beneficiaries.

**Please contact us if you have written a Will for the following:**

Barry Daniels; previously of Marden Hill, Hertfordshire SG14 2NE

**It is thought a Will was produced around 2005 but cannot be found**

**Please e-mail [helenhill@willwriters.com](mailto:helenhill@willwriters.com) with any details**

### 2-Day Introductory Course

22nd-23rd Oct  
26th-27th Nov

### LPA Course

19th Nov, Lincoln

### Advanced Instruction Course

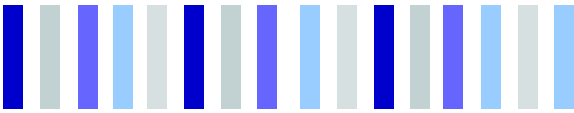
18th Nov, Lincoln

[Book your place now](#)



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## September 2008

S	Mo	Tu	W	Th	Fri	Sa
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
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28	29	30				



**Conference Member's Forum - get your ideas across in our marketing discussion**

## Events Calendar

- 24th-25th Sept - 2 Day Introductory Course, Lincoln
- 3rd October - Sussex Region Meeting
- 10th October - Essex Region Meeting
- 14th October - West Midlands Region Meeting

**3rd-4th November-Annual Conference**

## Transferable Nil Rate Band

At a recent Tolley Tax planning conference William Begley spoke about the transferable nil rate band and affirmed some of the issues that have been raised previously.

He made some interesting points on the practical implications relating to the fact that the transferable nil rate band must be claimed within two years of the second death. This highlights the importance of having relevant information relating to the first death available and the necessity for clients who can potentially use the transfer to retain the documents relating to the first death. The most important of these being the death certificate, marriage certificate, HMRC returns including IHT 200, the Will and the Grant of Probate.

The circumstances in which it is still preferable to set up a nil-rate band trust under the will of the first spouse to die were also discussed.

These include:

- Second marriages
- Multiple successive marriages (so as to pick up all the previous nil rate-bands)
- To minimise the impact of the relevant property regime
- Where there are assets with the prospect of high growth in their capital value
- As a way of losing marriage of assets value
- Leveraging i.e. placing assets subject to a charge in a trust so that the value of the charge is fixed and the value of the asset will grow over time
- Where there is agricultural or business property



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