

Protecting Your Assets

Will Trusts

Protecting your home

Most people who co-own their home with another person do so as joint Owners. They both own the whole property. On the death of a joint owner, the home AUTOMATICALLY becomes the sole property of the survivor who can then do what they want with it. However this can cause problems:

- If the survivor remarries, it is possible that the whole of the house will then pass to their new spouse on their death, thus disinheriting the children of the first marriage.
- If the survivor has to go into nursing of Residential Home, as the sole owner of the property, the local Authority has powers to charge the cost of care against the value of the whole house, again disinheriting the children.

The answer to all of these problems is to change the way the home is owned from joint owned from Joint Owners to Tenants in Common – a straightforward process that doesn't involve the mortgage company even if the property is mortgaged.

As Tenants in Common each owner owns one half of the property and, using a Will, can do whatever they wish with share of the property on their death, including:

- Leaving it to their (own) children so that if the surviving spouse remarries they will only own their own half of the property and can only give their own share to their new spouse
- Leaving it to their (own) children so that if a surviving spouse needs care the Local Authority can only charge the cost of care against the half of the house that the survivor owns – ensuring in either case that their children inherit at least half of the value of their home. In fact recent case law indicates that the value of half a house (providing the owners of the other half don't want to sell their share) is effectively Nil and in these circumstances the local authority may not be able to charge any of the cost of care against the value of the house.

We do, however, recommend that in the above situations provisions are also made in the will, through a will trust to delay the gift and prevent the surviving spouse being forced out of the home and also to ensure that the surviving spouse can have access to the capital and/or income if the house is sold. This type of trust is called a Life interest Trust and is sometimes marketed as a Property Protection Trust.

Protecting your savings etc

The trusts referred to above can also be used to protect saving etc from loss in the event of re marriage or the need to fund care fees. This type of trust is also a Life Interest Trust but is sometimes marketed as a Flexible Life Interest Trust.

Please note that these arrangements only apply to couples who are drafting Wills. They are not effective for single people. It is therefore essential to plan early. An alternative for single people or couples is to plan for these eventualities during their lifetime instead of on their death via a Family Protection Trust.

TRUSTS CREATED DURING YOUR LIFETIME

WHAT IS THE FAMILY PROTECTION TRUST?

It might help to think of a trust as a safety deposit box for you to keep your assets in. – You can pass your assets to a Family Protection Trust established in your name and for your name and for your benefit whilst you are living...but why ?

Placing your assets into a Family Protection Trust should ensure that they pass to the people you want after your death, according to the terms of the Trust, or under the terms of your Will. The inheritance due to any unreliable or bankrupt or divorcing beneficiaries can be protected by the Trust and be passed to them at a more appropriate time.

If you originally planned to leave everything to your surviving spouse or partner, but have children from a previous relationship or marriage that you would like to ultimately benefit, then the Trust can be used to protect their intended inheritance.

If your beneficiaries' estate is liable for inheritance tax, you can protect their inheritance from the effects of taxation for themselves and for their future beneficiaries.

The value of the Trust won't be eroded by the cost of administering your estate (probable costs) or possibly by the cost of residential care in later life, if needed, subject to the rules on deprivation of capital.

When the trust ends your trustees will pass the assets to your beneficiaries without having to follow any complicated processes or procedures and without having to apply for a grant of Probate.

Please ask for our free question and answer fact sheet