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Property Life Interest Trust Will
Factsheet



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Property Life Interest Trust Will Factsheet

A Property Life Interest Trust can be created within your Will to allow you to protect your property which you hope to pass on to your family, and must be setup when both partners are still alive.

Many couples will make a Will leaving everything to their surviving husband or wife and then on the second death to their children or grandchildren. However, this can cause issues in the future for your chosen beneficiaries who could be sideways disinherited, or with care fee costs.

What are the advantages of a Property Life Interest Trust Will?

The advantages of setting up a Property Life Interest Trust Will is that it gives you the certainty that your 50% share of your property will be passed onto your chosen beneficiaries and this cannot be undone by your surviving spouse, whilst in the meantime allowing your spouse to use and enjoy the property throughout their lifetime.

Sideways disinheritance

If you leave your entire estate to your spouse on the understanding that he or she will honour your joint wishes for an eventual distribution of your joint estate, your spouse can legally change their mind and leave the entire joint estate to other beneficiaries, which could be contrary to your original wishes.

Care home Fees

If you leave your entire estate to your spouse and then that spouse needs care, all their assets (including those inherited from you) will be taken into account when calculating how much your spouse has to pay for their care. Currently, the local authority will only step in with financial support if your assets fall below £23,500, meaning that all your assets, including your home and savings can be swallowed up for care fees up to the last £23,500.

A Property Life Interest Trust Will protects the deceased spouse's 50% share of the house from being taken into account for this calculation. This is because in the Will of the first spouse to die, they will leave their 50% of the property to a Trust and not to the surviving spouse. This means that when the surviving spouse is financially assessed they only own 50% of the house and not 100%. The deceased's 50% share of the house is 'ring fenced'

The surviving spouse retains the right to continue living in the property, or downsize and move to a different property (in which case the life interest will be ported to the new property).

The main advantage of a Property Life Interest Trust Will is that the 50% share of the house owned by the Trust is not counted towards the assessment of care fees by the local authority, which they would do if the surviving spouse had inherited everything from their pre-deceased spouse.

This is not a loop hole. The government rules (Charging for Residential Accommodation Guide) suggests that this arrangement will not be contested as 'deliberate deprivation' of assets, as some other arrangements do.

How does it work?

The terms of the Trust are set out in your Will and they usually appoint the surviving spouse and their children as the Executors and Trustees. The Trustees will look after the 50% share of the house of the first spouse to die whilst the second spouse is alive. The Trust is formally recorded so it is clear that the survivor does not own the whole house.

In order that the Trust provisions in the Will to work you need to own your property as **Tenants in Common** i.e. that you each own a distinct 50% share. When we prepare your Will we will check if you own your property as Tenants in Common, and if you do not then we will make the change at the Land Registry on your property title deeds.

Is the survivor subject to the wishes of the Trustees?

No, the Will stipulates what the Trustees can and cannot do. The Will stipulates that the survivor can live in the house uninterrupted provided he or she pays all outgoings in respect of the house, keeps it in good repair and insured. The Trustees cannot ask the survivor to move out unless the survivor has broken their obligations.



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What happens if the survivor needs to sell their home?

If the survivor needs to move house, downsize or even themselves go into care, the property can be sold. The sale proceeds will be divided 50/50 between the surviving spouse and the Trustees. This means that 50% of the sale proceeds will go into the survivor's bank account and can be used to pay for their care. The Trust's 50% will be paid into a Trust bank account (which the Trustees will open) and will be kept away from the survivor's own money. The money in the Trust bank account will not be used to pay the survivor's care fees.

The Trustees can then invest the money and they will need to pay any income (interest) from the Trust fund to the surviving spouse. They cannot distribute the capital. The surviving spouse will be entitled to the income for the rest of their lives so the money held by the Trustees will be held on Trust until the survivor dies.

What happens when both of us die?

The 50% share which passed into the Trust will be distributed in accordance with the Will of the first to die. The 50% retained by the survivor will pass according to their Will. Each person may have different ultimate beneficiaries but in many cases the beneficiaries will be the same people – usually children. However, if this is a blended family it may be that the person who dies first ultimately passes their 50% share of the house to their chosen beneficiaries and the person who dies second passes their 50% share of the house to different beneficiaries of their choice.

What if the survivor remarries?

The Trust comes to an end and the money or share of property held by the Trustees is immediately released to the beneficiaries named in the Will. The surviving spouse is no longer entitled to income from the Trust fund and can no longer live in the property. The 50% share of the surviving spouse is paid directly to them and they can use the money any way they wish.

How does this help sideways disinheritance?

If you have children from a former relationship or marriage and each of you wish to leave something to your children from the previous partnership you can stipulate in your Will that once the second person dies, your 50% share of the house is paid to the children from your previous relationship thereby ensuring that they will receive a benefit from your estate.

This is in contrast to you leaving your entire estate to your new partner and then after your death the new partner can change his/her Will leaving out the children from your previous relationship meaning they receive less or nothing.

What are the disadvantages of a Property Life Interest Trust Wills?

After the first death there are legal steps which need to be taken to 'activate' the Trust in your Will. This involves obtaining probate in your estate and documenting the Property Life Interest Trust on the title deeds to your property at the Land Registry. This has legal cost consequences.

You need to carefully consider who the Trustees will be as the share of the property passing into the Trust will be owned and managed by them.

There may be tax implications and it is recommended that you discuss this with your advisor.

The Trust cannot be created purely for the purposes of reducing care fees as it is then considered 'deliberate deprivation of assets'. You must also want to protect your assets for your beneficiaries to prevent sideways disinheritance, and safeguard against second or subsequent marriages.

For expert legal advice contact our Private Client Services Team today.

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