

The best time to do a Protective Property Trust

We strongly advise that you plan ahead while you are in good health and have full mental capacity. As with any planning, it is more effective the earlier it is done.

Ending the Protective Property Trust

When the surviving partner (or life tenant) has passed away, the Trust will be wound up by the Trustees.

How to protect your savings and investments

In addition to a life interest in property Trust, you can incorporate a different form of Trust into your Will called a 'Flexible Life Interest Trust' to protect your savings and investments. This creates a life interest in property and a life interest in the 'residue' which means that the surviving spouse/partner is granted a life interest in the house as before, but is also granted the right to income from other assets such as cash and investments. In this way, the capital is protected within the Trust for your eventual beneficiaries, and the local authority is prevented from gaining access to these assets as well.

How to protect your assets whilst you are both still alive

Neither the Protective Property Trust nor the Flexible Life Interest Trust take effect until the first of you dies which leaves part of your estate still vulnerable. If you are single and need care, or you are married and you both need residential care, then nothing is protected.

This can be remedied by establishing a Trust whilst you are still alive, known as the Family Protection Trust. It protects your assets, ensures that your family receives their rightful inheritance and avoids probate, allowing quicker distribution of the assets to your beneficiaries.

Next steps

Having a Trust in place is essential to protect your property and assets from unintended recipients and to ensure your wealth is distributed to your rightful beneficiaries.

To discuss setting up a Trust as part of your estate planning needs, please call Eleanor Betts on 0121 663 0975 or email eleanorbetts@thinkwillsandprobate.co.uk



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PROTECTIVE PROPERTY TRUST

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The steps taken to prevent your hard-earned wealth from passing to unintended beneficiaries are known as Estate Planning and extend beyond just having a simple Will.

A Protective Property Trust forms part of this process and ensures that the assets you have worked hard to create are passed to your intended beneficiaries, rather than to the taxman or local authority. Furthermore, there would be no risk of your own children losing out to the family of a new spouse or partner.

Property ownership

The way your property is owned is fundamental to achieving your wealth preservation objectives and forms the cornerstone upon which most estate planning is built.

Under current law in England and Wales there are only two ways in which two or more people can jointly own property between them:

- **As Joint Tenants** – where, on the death of the first joint owner, the property or asset automatically passes to the surviving joint owner(s). This cannot be overruled by your Will and therefore almost certainly contravenes your estate planning objectives or wishes.
- **As Tenants-in-Common** – where each joint owner owns a specific proportion of the property (usually 50% each) totalling 100%. Your share of the property can then be passed under the terms of your Will and steps taken to protect and preserve this for your intended beneficiaries.

It is essential to have the ability to pass your share of the property in your Will:

- **To avoid disinheriting your beneficiaries**
If your surviving spouse/partner remarries, or owns property jointly with a new spouse/partner, assets can pass outside of the original family unit and away from your children/beneficiaries, effectively disinheriting them as a result of death or divorce. Owning the property as Tenants-in-Common ensures that your share of the property (usually 50%) goes to your beneficiaries in due course, after the survivor has passed away.
- **To protect your children from a previous relationship(s)**
If you and your spouse/partner already have children from previous relationships you can ensure the children receive the desired proportions of your individual estates, whilst still providing for each other during your lifetime.

- **To protect against care fees**

If you go into care, your local authority has the power to take all your assets/capital as care fees, right down to your last £14,250.

Changing ownership from Joint Tenants to Tenants-in-Common

The first step in effective estate planning is to change the ownership structure of your property to Tenants-in-Common. The process is largely a paperwork exercise and involves notifying the Land Registry (if the property is registered) and a restriction placed on the Proprietorship Register to prevent any one owner disposing of the property without the consent of the other(s). We prepare all the paperwork for you and fully explain what the documents are before you sign.

How the Protective Property Trust works

Once you own your property as Tenants-in-Common, the next step is to incorporate a life interest Trust in your Wills.

Using a Protective Property Trust, your partner/spouse is granted a life interest to your asset(s)/property giving them the right to enjoy the use of the asset or the income it generates. However they have no ownership rights or access to the capital which is protected and preserved for your intended beneficiaries, i.e. your children.

Your intended beneficiaries will receive their share of the property once the life interest has ceased, usually on the death of the life tenant, i.e. your spouse/partner. However, you can restrict the life tenancy to a specific period of time or make it conditional so that, for example, it ceases upon re-marriage.

Protection against care home fees

Care fees are charged on any capital you own, including your home, your savings and your investments, right down to your last £14,250.

Your main asset is likely to be the family home and no doubt you will want to pass this on

to your children and/or other intended beneficiaries. But with the average cost of care estimated at £140,000 and with 1 in 2 women and 1 in 3 men needing long-term care, it is easy to see how a substantial part of your estate could disappear to meet these fees.

One partner goes into care whilst the other is still alive

Even if one partner goes into care, as long as the other partner is still alive and living in the property, it will be excluded from care home fees assessment.

How the Protective Property Trust helps to mitigate care home fees

The usual scenario is that you both live at home until one of you passes away and the survivor eventually goes into care. At this point, the local authority needs to assess the capital of the person going into care and if they own the property outright, the value of the property is included in the assessment. However, if their share of the property is owned by the Protective Property Trust, the Trust retains ownership until the surviving partner passes away and pays no rent, rendering the value of the property as “effectively nil” under current fee assessment guidelines.

Deliberate Deprivation

Of course, the local authority will look at any estate planning carried out and the reasons behind it, and if it suspects this has been done solely to avoid paying care home fees the planning is likely to be challenged and reversed. However estate planning that ensures your wealth is passed down your bloodline to your children and other intended beneficiaries is acceptable, and from a legal point of view you have not deprived the local authority of anything because you still own half a house each.

Trustees of your Protective Property Trust

Appointing Trustees

The Trustees of the Protective Property Trust will usually be the surviving spouse/partner and at least one other person (normally children, if old enough, or other relatives or beneficiaries). There must be at least two Trustees and they must act unanimously so that the spouse/partner can never be overruled. In addition, the Trust itself protects the life tenant during their lifetime.

If a Trustee dies

There must always be two Trustees and if one dies, the remaining Trustee has the power to appoint somebody else under the terms written into your Wills when incorporating the life interest.

Activating the Trust

The Trust is only set up when the first person passes away. Whilst both parties are alive nothing happens, other than the way the property is owned which has changed from joint tenants to Tenants-in-Common.

Fees

When the Trust is activated, the Trustees of the Trust become Tenants-in-Common owners of the property with the survivor, and as such, it is essential that the interests of the Trustees are registered at the Land Registry. This forms part of the probate process and will cost about £200-£300.

There have been cases where the local authority has ignored the Tenants-in-Common restriction and attempted to persuade the survivor to sell the property, effectively converting his/her half of the property into an assessable asset for care fee purposes. It is vital, therefore, that proper procedure is followed by the executors of the estate.

Moving house as Tenants-in-Common

You can move house at any time whilst both you and your spouse/partner are alive except you must remember to own your new house as Tenants-in-Common.

After the first death, the survivor can still move house as normal but the only difference here is that the relevant documentation and deeds are signed by the Trustees rather than the survivor alone.

It is advisable however that you take professional advice if you are considering moving house, particularly after the first death has occurred, because it's very easy to inadvertently undo all your estate planning.

Inheritance Tax

A life interest is assessable for Inheritance Tax calculations, but is not included for any assessment of your assets by the local authority if you go into care. If you have an Inheritance Tax liability we can assist you to mitigate this. For further information, please contact us on 0121 663 0975.