



## **Life Interest Trusts**

### **What is it?**

A Trust is a vehicle whereby assets are held by certain persons-the trustees-for the benefit of others-the beneficiaries, while another person-the 'Life Tenant' has the use of, or income from, the asset.

The beneficiaries can be trustees too.

### **What is it for?**

A Life Interest Trust is designed to preserve assets. It means that a person-often the surviving spouse-can use an asset, or have the income from it, but as they do not own it themselves, they can never give it away, for example to a new spouse.

### **When are they used?**

Life Interest Trusts are often found in Wills to preserve a property or a share of a property. In other words, if a person dies, they can put their share of the marital home into a Life Interest Trust.

The surviving spouse owns the other half or share of the property. (The property may not be owned 50/50, but for our purposes we will assume that it is.)

The Trust allows the surviving spouse to live in the property until their death. At that time, the ultimate beneficiaries-generally, but not necessarily the children-can then obtain their inheritance.

The trust can also end on remarriage, so that if the surviving spouse gets remarried, at that point the beneficiaries-often the children-will receive their share of the property, or the cash equivalent of it.

The Life Tenant is obliged to maintain the home and cannot sell it without the permission and agreement of the trustees of the other share of the property.

If cash is put into this type of trust, then the surviving spouse-or the person to benefit from it-the Life Tenant-is absolutely entitled to the income or interest from that cash.

### **What kind of person would benefit from this arrangement?**

Generally this type of trust is recommended for clients in a second or subsequent relationship, especially where there are children from the original relationship for both spouses, and children from the new relationship as well.

The Trust ensures that all the children will benefit and will not be disinherited even after the death of a parent.

### **What are the advantages of a Life Interest Trust?**

As stated above, they are used to preserve assets. If a person dies and leaves everything to the surviving spouse, if that spouse remarries and makes a new Will leaving everything to their new spouse, then if the surviving spouse dies, the new

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spouse-perhaps a complete stranger?-takes the house and all of the money and the children of the deceased potentially get nothing.

Also, if the new spouse has been married before and has children of their own, then those children will benefit from an estate that was not built up by their own parent.

So the advantages of the trust are that it can ensure that even though a person is deceased, they can guarantee that the children from their relationship will not be totally disinherited by using the trust.

Of course, the surviving spouse still owns their share of the marital home, and if they choose to give it to the new spouse that's entirely up to them, but the trust ensures that they can't give everything away.

## **What are the disadvantages?**

The main disadvantage is that the surviving spouse has to ask the permission of the trustees if they wish to move home, or wish to do anything to it, such as build an extension or remortgage.

Apart from that, the trustees generally have little or no involvement in the property.

## **Can the surviving spouse move home?**

Yes-with the agreement of the trustees.

## **What happens if they downsize and money is released?**

The beauty of the trust is that it is very flexible. The surviving spouse may decide that they do not need the trust to continue and so they may ask the trustees to end the trust and give the beneficiaries their inheritance. This can often be done if the house sold is large and a smaller property is bought outright with the survivor's share of the property.

If this is not practical, the trust is simply transferred to the new property and things continue as before, or the trust owns a smaller or larger share of the new property, and the balance of the monies are invested and held under trust for the beneficiaries. These decisions are made at the time of the sale of the property, and can only be realistically assessed at that time.

It is important to remember that the purpose of the trust is to preserve assets for the beneficiaries, and as long as this is borne in mind, then the trustees and the Life Tenant can vary shares held by the trust or even close it down depending on the needs and wishes of the Life Tenant.

The surviving spouse is entitled to the income from any monies released in this way but not generally the capital.

## **Can the Life Tenant be allowed access to the capital?**

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This is a question that needs to be decided when the Will is written. In short, if the power to advance Capital is written into the Trust in the Will, then yes, the Life Tenant can, with the agreement of the Trustees, dip into the capital. However, this should only be for emergencies and requires the agreement of all of the trustees.

Generally at the time of setting up the Will, the question that should be asked is, 'Who is more important, the surviving spouse or the children? (or other beneficiaries?) This is because if it is felt that as much of the asset should be preserved for the children then no access to the capital should be allowed.

If however, the spouse is deemed to be more important then access to the capital should be allowed.

Take the following example;

The surviving spouse downsizes and releases capital. They move to a new property and a while later, the boiler blows up.

A new boiler is required and this may cost a few thousand pounds.

If there is a large sum of money held for the children that the spouse cannot access, and they have no monies of their own then the surviving spouse is going to be put into a very difficult situation.

If however, access is allowed, then as long as the Trustees agree, the spouse can pay for a new boiler from the funds held for the beneficiaries.

As the surviving spouse is drawing the income or interest from the trust, the capital is not growing, so it must be understood that there will be less there after second death, but would the children be happy knowing that their mother or father was left in a home without hot water and heating? Probably not.

Therefore, the power to advance capital is generally included in a Will, but this matter is always discussed with a client fully at the interview.

## **Can the children be Trustees?**

Yes. Some people think this is the best option and some people disagree entirely.

## **Can the surviving spouse be a Trustee?**

Yes. We generally recommend that the surviving spouse is ALWAYS a trustee-unless there is a very good reason for them not to be a Trustee.

## **Do all the Trustees have to agree for decisions to be made?**

Yes. This means that if the spouse and children are Trustees, the children cannot throw the parent out against their will.

## **How many Trustees can there be?**

A maximum of four Trustees are permitted.

## **Can I have a professional as a Trustee-such as my Solicitor or Accountant?**

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Yes. Often this is a good option to take because although family may be swayed by a forceful member of the family, an independent Trustee may not, and they should act in the best interests of everyone involved.

## **Will this Trust save Inheritance Tax-(IHT) ?**

No. This trust was never able to save IHT. This is because, even though the surviving spouse never owns the assets in the trust, HMRC's view is that because they have had the full benefit of the assets-either income in the case of money, or the ability to live in a marital home-then they will be taxed as if they did own it.

If you would like to know more, or would like to discuss your particular circumstances, please call The Hertfordshire Will Company on 0800 019 1540 for a free, no obligation discussion.

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