

LIFE INTEREST IN PROPERTY TRUST
(or Protective Property Trust "PPT")

FREQUENTLY ASKED QUESTIONS

This fact sheet is intended to act as a general guide as to how the Life Interest Trust (aka the Protective Property Trust "PPT") Will works in practice and when it might be appropriate to consider making Wills incorporating life interest trusts, whether for your property or indeed all your residuary estate. If you have any further questions, or require clarification on any of the points below, please do not hesitate to contact us free on our Head Office (0800 781 6658).

1. WHAT IS ESTATE PLANNING?

In basic terms estate planning is taking steps to ensure that your hard earned wealth is passed down to your loved ones in the proportions you wish and at the appropriate time. For most people this involves two main objectives; firstly, ensuring that your surviving spouse (or partner) is looked after and secondly that your hard earned wealth is protected from potential attack and is preserved for your beneficiaries (i.e. children and/or loved ones). Most importantly it is taking the necessary steps to prevent that wealth from passing to other third parties, including new spouse/partner, the taxman and the local authority. Estate planning is also known as succession planning or bloodline planning. They all mean the same; ensuring your children inherit the wealth you worked hard to create during your lifetime.

2. WHY IS THE WAY THE PROPERTY IS OWNED SO IMPORTANT?

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

There are only two ways of two, or more, people owning property in England & Wales. One is as joint tenants (this applies to the very large majority of people) and the other is as Tenants-in-Common.

Where property is owned as joint tenants then following the death of the first of the joint owners the asset passes under the Law of Survivorship to the surviving joint owner (or owners if more than two joint owners). This is automatic. Indeed, all jointly owned assets, including property, cannot be passed under a Will or under the Laws of Intestacy (the rules that apply if there is no Will). The Intestacy rules

will almost certainly not match your estate planning objectives or wishes.

The other way of owning property in England & Wales is as Tenants-in-Common "TIC". Where property is owned as TIC each joint owner owns a specific proportion of the property (usually 50% each) but always adding up to 100%. Once you own a specific share of the property that asset can then be passed under the terms of your Will and steps can be taken to protect and preserve your wealth for your beneficiaries.

3. WHY IS IT ADVANTAGEOUS TO BE ABLE TO PASS MY SHARE OF THE PROPERTY IN MY WILL?

There are three main situations where owning the property as TIC owners may be advantageous:

- (a) To avoid sideways disinheritance caused by owning property as joint tenants. Where the 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 TIC ensures that your share of the property (usually 50%) goes to your beneficiaries in due course, but only after the survivor has passed away. See 7 below.
- (b) To mitigate care home fees. Care home fees are payable to the Local Authority if you go into care, and in certain circumstances they will take all of your assets/capital, including your home, down to the last £14,250. This planning is a by product of succession planning above. See 8 below.
- (c) To ensure desired distribution of individual estates where couples come together later in life, both having children from previous relationships. In this situation they normally want to ensure that their new spouse/partner is provided for during their lifetime but that their respective share of the property ultimately passes down to their own children.

4. HOW DO WE CHANGE OWNERSHIP FROM JOINT TENANTS TO TENANTS IN COMMON?

This is largely a paperwork exercise. We prepare all the paperwork for you and then explain what the documents are before you sign them. This includes notification to the Land Registry (if the property is registered) including a restriction being placed on the Proprietorship Register of the Title Register to prevent any one owner disposing of the property without the consent of the other(s).

5. WHAT HAPPENS AFTER THE CHANGE TO TENANTS IN COMMON?

Once the property is owned as TIC and Land Registry is notified they will send you a "Notification of Completion" certificate. You should keep this with your copy Wills and other estate planning documentation. If there is any query relating to title or registration we will deal with it on your behalf.

6. I WANT TO MAKE SURE MY CHILDREN WILL BENEFIT FROM MY HARD EARNED WEALTH BUT I ALSO WANT TO ENSURE THAT MY SPOUSE/PARTNER IS PROTECTED DURING THEIR LIFETIME. CAN I DO THIS?

Yes, this is precisely what the PPT is designed to do. A life interest is granted to the survivor. Generally the life interest ends when the life tenant(survivor) passes away. Simply put a life interest is the right to enjoy the use of an asset or to receive an income it generates. However, it does not give the life tenant any right of ownership or access to the capital, which is protected and preserved for the eventual beneficiaries. If you already own your property as TIC we can incorporate a life interest trust in your Wills if you have not already done so.

7. WHO GETS MY SHARE OF THE PROPERTY AND WHEN?

The Will says where your share of the property is to go but ONLY after the life interest has ceased, normally on the death of the life tenant (surviving spouse/partner). The ultimate beneficiaries would normally be your children/loved ones in whatever proportions you wish.

The life tenancy can be restricted to a specific period of time or made conditional so that, for example, it ceases upon re-marriage.

However, the trust can run for 125 years (this is called the perpetuity period) and this is important when considering the market value of each part of the house as it offers some protection from care home fees.

8. WHY ARE CARE HOME FEES SUCH A BIG ISSUE?

For most people their main asset is the family home, which they have worked hard all their life to own. Most of us want to pass the benefit of all our hard work on to our children with as little interference or loss as possible.

Unfortunately it is normally the survivor who ends up in care. If property has passed by survivorship (or a basic Will) so that the survivor has become the sole owner of the property then the whole of the value of your home is at risk. Care fees are charged on any capital, including your home, savings and investments, which you own down to the last £14,250 (2010/11). In this regard it is a 100% tax from the top down.

Currently 1 in 3 women and 1 in 4 men go into long term care and this figure is only likely to increase. The average length in care is in excess of 3 years and the average cost of care is about £39,000 per annum. It is easy to see how a substantial part of your estate could disappear to meet care home fees.

9. WHAT HAPPENS IF ONE OF US GOES INTO CARE WHILST THE OTHER IS STILL ALIVE?

Nothing. The property is excluded whilst the spouse/partner continues to live in the property.

10. HOW DOES OWNING THE PROPERTY AS TENANTS IN COMMON MITIGATE CARE HOME FEES?

The normal scenario is that you both live at home until one person passes away and the survivor may eventually go into care. The Local Authority then need to assess the capital of the person going into care. Under the CRAG (Charging for Residential Accommodation Guidelines) which the LA must follow the market value of a TIC share of a property is "effectively nil". This is because the other share is owned by a trust which can run for 125 years and pays NO rent. If the family do not buy the property no-one else is likely to offer much for it.

There is debate about the value of half of a TIC owned property but it is substantially less than 40% of the whole. In addition, if you have negligible other assets the last £14,250 of assessed value is also disregarded. Many Local Authorities are now accepting that a half share of a TIC property is worthless but there can be no guarantee that this situation will continue.

11. I'VE HEARD ABOUT SOMETHING CALLED DELIBERATE DEPRIVATION. CAN THE LOCAL AUTHORITY CLAIM THIS IS DEPRIVATION OF ASSETS?

The local authority will look at any planning that was done and the reasons it was done. Any planning done for the purpose of avoiding care home fees is likely to be challenged and reversed. However, the planning we are talking about is succession or bloodline planning. The purpose is to ensure that as much of your hard earned wealth as possible passes down your bloodline to your nominated beneficiaries.

From a legal point of view you still own half a house each (which you always thought you did!) and have not deprived the LA of anything. The LA will still assess the value of the half house owned by the person who has gone into care but their own rules value it at nil. As with any planning it is more effective the earlier it is done.

12. WHO SHOULD I APPOINT AS TRUSTEES?

The Trustees are normally the surviving spouse (or 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 the spouse/partner can never be overruled.

13. WHAT HAPPENS IF ONE OF THE TRUSTEES DIES?

The Wills allow for the existing Trustee to appoint a new Trustee in their place. There must always be at least two.

14. WHEN IS THE TRUST SET UP?

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 changes from joint tenants to TIC.

15. WHAT ABOUT ONGOING FEES?

After first death the Trustees of the Trust become TIC owners of the property with the survivor. The executors of the Will must ensure that the correct procedure is followed and that the interests of the Trustees are registered at Land Registry. This is done as part of the probate process and will cost about £200-300.

This is essential because there have been cases where the local authority have attempted to ignore the TIC restriction and persuade the survivor to sell the property converting his/her half into an assessable asset.

16. CAN I MOVE HOUSE?

Yes, you can move house at any time. Prior to the first person passing away you move house as normal BUT *you must remember to own the new house as TIC.*

After first death the survivor can move house, upsize or downsize, the only difference would be that the documentation and Deeds are signed by the Trustees of the Trust rather than by you alone but that makes no real difference. The powers and obligations move with the Trust and attach to the share of the new property owned by the Trust.

It is vital that you take professional advice if you are considering moving house, particularly after first death has occurred as it is very easy to undo good estate planning.

17. DOES THIS TYPE OF TRUST HAVE ANY EFFECT FOR INHERITANCE TAX?

No, a life interest is assessable (i.e. included in your assets) for Inheritance Tax calculations but is NOT included for any assessment of your assets by the Local Authority if you go into care. In other words the half of the first to pass away is always 100% protected.

If you have an Inheritance Tax liability you only need to be aware that IHT is a voluntary tax and can be avoided legitimately. For further information please contact us free on 0800 781 6658.

18. WHEN IS THE BEST TIME TO DO A PPT?

We strongly advise that you should plan ahead while you are in good health.

Obviously you must fully understand what you are doing to proceed. This is called having capacity. To have the requisite testamentary capacity you must understand the nature and effect of your actions, the value of your assets and the persons to whom you should give consideration as beneficiaries.

19. HOW LONG DOES THE PPT LAST AND IN WHAT CIRCUMSTANCES DOES IT END?

Technically a Trust can last for up to 125 years (the perpetuity period for Trusts) but it will usually be wound up by the Trustees upon the death of the survivor.

However, if the Trustees decide it is appropriate the Trust can continue after the survivor's death. You may have a specific reason for wishing the Trust to continue e.g. one of the beneficiaries is disabled and you wish them to benefit from the Trust but not be assessed as having an absolute right to the capital, perhaps because they are in receipt of means tested benefits. If there are such relevant circumstances we would need to know when setting the Trust up.

20. WHAT IF I HAVE SAVINGS AND INVESTMENTS WHICH I AM ALSO CONCERNED ABOUT LOSING?

The Life Interest Trust can be used to protect some, or all of the value of your main property, and is also known as a PPT. However, if you have other assets such as cash or investments then these will be vulnerable if they are solely owned by the person going in to care. This problem is compounded if it is the surviving spouse who needs care and if they have inherited wealth from their deceased spouse or partner.

In those circumstances a different form of Trust called a Flexible Life Interest Trust can be included in the Will. This Trust has two components; the life interest in property section and the life interest in the residue section.

The survivor is granted a life interest in the house as before with all the same features as described above but is also granted the right to income from other assets such as cash and investments. The capital is protected within the Trust for the eventual beneficiaries. This means that the Local Authority cannot take this portion of your overall estate.

If you have assets, other than the house, which you would like to protect, then a Flexible Life Interest Trust should be considered. Remember if you do need to go into care, only £14,250 of your assets are protected, in most circumstances.

21. CAN ANYTHING ELSE BE DONE?

All of the above measures can work and work effectively, however neither the PPT, or the Flexible Life Interest Trust, take effect until the first of you dies. Part of the overall estate is then protected but the other part is still vulnerable.

If you are single and need care or married and you both need residential care nothing is protected.

We can talk to you about establishing a trust whilst still alive to protect everything and to ensure that your family receives their rightful inheritance without the need for administration of the estate. The Family Trust is an innovative approach and one that is discussed in depth on a separate fact sheet available from us.

Remember if you want to protect and preserve your assets to ensure that they go to your loved ones and not to the Local Authority or a new spouse/partner you need a trust.

And the sooner you do it the more effective it is likely to be.

For further information, or for clarification of any of the points in this fact sheet, please contact us free on 0800 781 6658