

WOLLENS

Full spectrum law

# Why you might need a trust in your Will



### **Would you like to protect your home from nursing home fees, re-marriage or bankruptcy?**

If so, then you can achieve this by having the right type of Will.

Many couples initially think that they would like to leave everything to their spouse/partner and then on the second death, everything passes to children and/or grandchildren. If this happens, the surviving spouse will own everything (the house and all cash assets). If the survivor has to go into a care home or needs care at home, if their assets (including their home and savings) are worth more than £23,250 they will have to pay for their care. Very quickly, cash assets are spent on care and then the house might have to be sold to pay for ongoing care. Because the survivor has had to pay for their care, their assets when they die may be minimal, meaning there is not much left for the children/grandchildren to inherit.

### **Would you like to ensure that your beneficiaries receive at least half the value of your house?**

To stop the above situation happening, instead of leaving everything to your spouse/partner on the first death, your Will can leave your share of your house to a trust.

The trust in your Will provides that your spouse/partner has the right to live in the house for the rest of their lifetime, or to receive the income from it, if it is rented out. When the right to occupy or receive the income comes to an end (usually when the survivor dies), the property will pass to your chosen beneficiaries.

The survivor can occupy the property rent free but is responsible for paying all day-to-day expenses relating to the property, keeping the property in good repair; and keeping it fully insured. Your Trustees will decide on the insurer and the level of insurance required. The survivor must meet these expenses from his/her own funds.

The survivor can direct your Trustees to sell the property and buy a replacement for the survivor to live in. Your Trustees must comply with this direction if they are advised by a Chartered Surveyor that the replacement property is suitable. Any funds left over or not used towards a replacement property should be used to provide an income, which will be paid to the survivor.

If the survivor can no longer live at home and has to go into a nursing home, the share of the property or capital from any sale held in the Trust is disregarded when assessing care costs. The interest/income would be taken into account.

This ensures that the capital or any share of the property is protected for your ultimate beneficiaries.

Similarly, this type of trust may also be sensible if you want to protect your house from the survivor's re-marriage or bankruptcy.

If you want to achieve the above, then you need what we call a 'life interest trust of property'.

### **Do you have children from your first marriage/relationship?**

If so, you may want to provide for your new spouse/partner, but ultimately you want your children to inherit.

You may trust your spouse/partner and may be happy to leave everything to them on the understanding that they will provide for your own children. However, they could fall out with your children after your death or re-marry or form another relationship. The survivor could then amend their Will disinheriting your children.

If you want your children or chosen beneficiaries to inherit all of your assets, the only way you can ensure this happens is if you leave your estate to your spouse/partner in trust. This would include everything that you own in your sole name, such as your share of a property owned as tenants in common, shares, cash and savings.

This type of Will is known as a 'life interest trust of residue'.

The trust in your Will gives your spouse a right to the income from the Trust Fund for life. Your trustees also have the power to allow your spouse/partner to occupy any property that is included in the trust. When the right to income ends, the capital is given to the named beneficiaries i.e. your children/grandchildren or chosen beneficiaries.

Your trustees also have the power to pay all or any of the capital in the Trust Fund to the survivor during the period in which they are entitled to the income, to provide maximum flexibility and additional security for them. For example, if the survivor cannot live comfortably on their own assets and the interest they receive from the Trust, the Trustees can give them capital from the Trust Fund.

When the survivor's right to income ends (usually upon their death), the Trust Fund will pass to your children or other named beneficiaries.

**Do you have concerns about a child's marriage, are they vulnerable, receive means-tested benefits or are bad at managing their own money?**

If you have any of the above concerns, then it may be sensible to have some flexibility in your Will which allows your Trustees to make decisions based on the circumstances at the time of your death. Your Trustees have the discretion to decide which beneficiaries benefit and when.

It's difficult to predict what your child's situation will be when you die, so if you have a 'discretionary trust' in your Will, this can provide flexibility. A detailed letter of wishes would set out your concerns and how you would like your Trustees to deal with them.

There are likely to be ongoing costs of running a trust and some trusts have to be registered with HM Revenue & Customs. We can explain about these costs in more detail.

## How can Wollens help?

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North, South, East or West. Wherever you are, we've got you covered. Contact us today for an informal chat, without obligation. We look forward to hearing from you. Please ask for the Asset Protection Trusts Team.



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Contact us today to book your initial fixed fee interview.



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