

What happens after I die?

Your executors and trustees would need to obtain a Grant of Probate to your estate and arrange for your share in the property to be transferred into the names of your trustees. Your trustees should also be noted on your home insurance policy. A spouse can be appointed as an executor and trustee.

This is all very easily dealt with and we can assist you when the time comes.

Our Wills & Probate team offer expert advice on:

- Wills
- Powers of Attorney
- Care for the Elderly
- Court of Protection Applications
- Administration of Estates / Probate
- Intestacy
- Inheritance Tax Planning and Asset Protection
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Life Interest Trust Wills

a guide to Life Interest Trust Wills



What are Life Interest Trust Wills?

Life Interest Trust Wills are a type of Will designed to protect a share of the family home from the effects of long term care fees or re-marriage. They are specifically for co-owners of property.

How do they work?

Most couples own their property as 'joint tenants'. This means that when one of them dies, their share in the property automatically passes by survivorship to the other joint owner.

If the survivor then requires long term care then the whole of the property would usually be taken into consideration when assessing care fees. Similarly, if the survivor re-married then the whole of the property could pass to the survivor's new spouse and/or their family.

When preparing the Life Interest Trust Wills we alter the ownership of the property from 'joint tenants' to 'tenants-in-common'. This means that each person owns a separate share in the property (eg 50%) that can pass under the terms of their Will, rather than automatically passing to the survivor.

The Will then includes either a 'right to reside' or a 'life interest' in the property for the survivor.

Right to reside

If the Will includes a right to reside then the survivor is entitled to reside in the property for as long as they wish (subject to any restrictions). If the survivor chooses to leave the property, or if they are no longer able to live there then the 'right to reside' comes to an end and the deceased's share in the property passes to their beneficiaries. The Will can be adapted to allow the survivor the option to move to a similar property.

Life interest

This option is more flexible and allows the survivor to benefit from the property for the rest of their lifetime, rather than until the property is sold.

For example, if the survivor wishes to downsize then any surplus net sale proceeds can be invested and the survivor can have the benefit of the income for the remainder of their lifetime.

Restrictions

It is possible to include restrictions in the Will so that the right to reside or life interest ends if the survivor re-marries or starts to live with someone else.

Can the survivor move?

Yes, the terms of the Will can be as flexible as you like.

Can I be forced out of the property?

No, the beneficiaries are only entitled to the property share when the trust comes to an end.

Is it not better to give my house to the children now?

Most definitely not. Gifting your property to your children can have serious consequences if they die, become divorced or bankrupt or you fall out. Most importantly the gift can be regarded as deprivation of capital if you later require funds for care and the Local Authority can refuse to pay for your care.

What about the 7 year rule?

The '7 year rule' relates to inheritance tax calculations and not care fees. The Local Authority can go back as far as they like to see if you have given away any assets that could have been used for your care.

Can I protect cash?

Yes. If cash is held in individual names then it is possible to give the survivor a 'life interest' in the cash also.