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. The trust would also need to be registered with HRMC .

We can assist you when the time comes with these matters.

Our Wills & Probate team offer expert advice on:

- Wills
- Powers of Attorney
- Administration of Estates
- Obtaining Probate / Letters of Administration
- Intestacy
- Inheritance Tax
- Will Trusts

Why use Timms?

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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 by the survivor.

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

When preparing a Life Interest Trust Will 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 (e.g. 50%) that can pass under the terms of their Will, rather than automatically passing to the survivor.

The Will will then include either a 'right to reside' or a 'life interest' over the share of the property of the first to die which protects the survivor's ability to live there but ensures that they don't inherit it. The protected share of the property will eventually pass to the first to die's chosen beneficiaries when the trust comes to an end, i.e. to their children.

Right to reside

If the Will includes a 'right to reside' then the survivor is entitled to live in the property for as long as they wish (subject to any restrictions in the Will). If the survivor chooses to leave the property, or if they are no longer able to live there, 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 held on the same terms, if this is required.

Life interest

This option is more flexible as it allows the survivor to benefit from (i.e. live in) the first to die's share of the property for the rest of their lifetime, rather than just until the property is sold. If the survivor does not wish to live in the property, then the property may be sold and the survivor will benefit from the income generated from the investment of the first to die's share of the property for life instead i.e. the bank interest.

It is also possible for the survivor to use the full value of the property to downsize, if they wish to, and then any surplus net sale proceeds are shared between the survivor and the trust, with the survivor benefiting from any income generated by the trust 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 Will can be drafted to provide for a replacement property to be purchased and held on the same terms.

Can I be forced out of the property?

No, the beneficiaries are only entitled to receive their interest in the property share when the trust comes to an end. Usually, this is on the survivor's death.

Is it better to give my house to the children?

No. Gifting your property to your children in your lifetime can have serious consequences if they die, divorce, become bankrupt or you fall out. Further, the gift can be regarded as 'deprivation of capital' if you later require funds for care, and the Local Authority may refuse to pay for your care.

What about the 7 year rule?

The '7 year rule' relates to inheritance tax 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.

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