AdviserWill

SIMPLE, FAST AND EFFICIENT

Trusts for More Security and Family Protection

What is a Protected Property Trust (PPT)?

A protected property trust (PPT) is a legal document acquired by those who wish to protect their home from being forfeited to the government or third parties. The surviving spouse or partner must possess the right to use the deceased's share of the property for the rest of their life. This is called "a life interest".

In addition, it is also highly recommended that both parties take out a Lasting Power of Attorney (LPA) simultaneously; this serves to maintain "control" over both halves of the property, should one party become mentally incapacitated. If an LPA is drafted at the same time as a PPT, a reserve attorney should always be named in the LPA.

Needs for Couples, Aged 50+

Most couples who own their home on a joint basis often believe that each owns half of the home. In fact, they both own it in a single share of 100%. When one owner dies, that owner does not have a share of the home to leave to their chosen beneficiaries because the surviving owner is now the sole owner of the house. If the surviving owner later goes into long term care, the entire value of the home can be taken into account as an asset to be used in paying their care fees.

A Protective Property Trust (PPT) permits the clients to divide the ownership of their home into two shares so that when the first person dies, their share can be left to the child(ren) in trust while the surviving partner has the right to live in

the house for the rest of their life. If the surviving spouse later requires long term care, the home's value has been divided and cannot be taken into account as an asset to be used in paying their care fees.

Young Families and Couples

A PPT is particularly beneficial to clients in this age group when they have young children who are pre-teens or teenagers up to 20 years old.

If the family home is jointly owned and one spouse or partner dies, the surviving partner would then acquire the house as a result of their joint ownership with the deceased partner. If the surviving partner remarries and then dies, the new spouse may inherit part or even the entire house, leaving the children to inherit nothing. The PPT can ensure that, upon the death of the first partner, the children will receive half the house with the survivor retaining the right to live there for the rest of his or her life.

Life Interest

The "life interest" gives the survivor the right to:

- Live in the house
- Sell the house without seeking prior approval from the children
- Live off the interest of the capital that the half share produces
- Sell the house and purchase a different one (perhaps downsize)
- Rent the house out

The survivor cannot sell the house and spend the proceeds. They can, however use part or all of the proceeds to purchase, improve or repair a replacement property. The survivor remains responsible for protecting the children's half-share of the property. If the client down-sizes, at least half of that house is protected from unnecessary loss as well.

What Is Half Property Trust (HPT)?

Half Property Trust allows a single Person owning 100% of the property to leave the property to whomever they wish (e.g. children). In addition, HPT allows another person (e.g. partner) to live in the house for the rest of his/her life. On that person's death, the property then passes to the children unconditionally.

Nil Rate Band Trust - (Married or Unmarried Couples)

The Nil rate band (NRB) is placed into trust on the first death; this can include property and cash up to the limit. The remaining spouse can then have a life interest in the assets that are under trust as well as borrow money from the trust, which would be a debt to their Estate and could also reduce the IHT upon second death. This is a good option for clients who have assets that are likely to exceed the NRB limit. It can also ensure that your beneficiaries (e.g. children and grandchildren) are always in the best financial and legal position. It allows flexibility in the trustees changing the beneficiaries over time and can be a good way to avoid inheritance tax for future generations.

Unmarried couples

If you are unmarried and your joint assets are in excess of the NRB limit then this is a great option. It is particularly beneficial when one partner's assets exceed the individual NRB and the other partner's do not. Under current legislation the transferable nil rate band is only available to married couples.

Memorandum of Wishes

A Memorandum of Wishes (MOW) is a Legal letter to your executor expressing your precise wishes in relation to certain goods and how they are distributed. (You cannot include money in a Memorandum of Wishes).

Discretionary Gift Trusts

Leaving an Inheritance with Special Conditions

Conditions are usually based on leaving an inheritance to someone according to specific conditions that do not fall into the category of any of these trusts. This facilitates the procedure of leaving a specific gift or amounts of money to a beneficiary, but with certain conditions and terms attached to the bequest.

Benefits of a Discretionary Gift Trust

- Gives you peace of mind that whatever you are leaving to the particular beneficiary will be inherited but subjected to certain stipulations
- You may appoint trustees to ensure that the conditions of inheritance are always met

Disadvantages of Discretionary Gift Trust

- There is a risk that you could place conditions on the trust that are unreasonable and very controlling, making it extremely difficult, if not impossible, for the trustees to administer

Disability Trust (Single or Couple)

Benefits of the Disability Will Trust

Leaving the inheritance in Trust, rather than directly to a disabled beneficiary, ensures that the inheritance is not deemed as that person's own capital asset, preventing it from counting against their disability benefits.

If the disabled beneficiary of the Trust dies before the funds are fully distributed, any remaining balance can be redistributed among the remaining beneficiaries of the trust.

You can appoint trustees to manage the Trust to protect the beneficiary as they may lack the skills to handle money and finances in general.

Living Wills - Advance Directive

This document is beneficial in the event that you become terminally ill and feel that you do not want your life artificially prolonged, giving you ''legal say'' to have medication stopped or a life support machine switched off. This provides peace of mind for your family as they would not have to make such a decision at a very emotional time.

If you make an advance decision to refuse treatment and then later make a health and welfare LPA which gives someone authority to give or refuse consent to the same kinds of treatment, your advance decision will become invalid.

Disadvantages of Advanced Directive - Can be challenged by the loved ones and doctors in case of “terminal illness” and could be overturned.

Business Lasting Power of Attorney

Benefits of an LPA Business

- Ensures that if you are ill or unable to look after your business affairs for whatever reason someone you have appointed will look after your business affairs for you, in a legal manner
- Prevents the future stress and huge expense of appointing somebody under the Office of Public Guardianship (a legal requirement if you are no longer of sound mind)
- Protects your partners and employees to ensure the business can continue to trade in your absence. It also offers family peace of mind to know the business is in good hands while you are absent from the business.