

Planning for the Future Series 3A

WILLS and TRUSTS

Protection and Management of assets following the Death of the First Spouse

Many couples worry about how the impact of payment for care may reduce the size of their estate which passes to their children.

EXAMPLE

Bob and Mary married in 1969 when they were both 22 and this was their only marriage. When they married, they had no money and through their hard work and determination, they managed to pay off their mortgage and save enough money to provide security in retirement. Bob had Alzheimer's Disease and Mary cared for him at home for many years. Very sadly, the strain took its toll on Mary and she died in 2017 leaving Bob on his own in the family home. Bob couldn't manage by himself and none of the three children were able to care for him as they have full time jobs and didn't live locally. After much soul searching, Bob's children took the decision to arrange permanent care for Bob in a local and highly recommended care home. Bob settled well.

Bob and Mary had made mirror Wills (and Lasting Powers of Attorney) leaving everything to the surviving spouse and after both deaths to the children in equal shares.

This meant that on Mary's death all of her savings and the home passed outright to Bob and he became the sole legal owner of all of their assets. The children managed their dad's finances on his behalf under the Lasting Power of Attorney.

In relation to the assessment of Bob's means to pay for his care, the Local Authority take into account his income (e.g. pension), his savings and then the value of the house (12 weeks after his care becomes permanent). The whole value of the house was included in the assessment, including Mary's half.

The children are of course anxious to secure the best care available for their dad but they are worried that the whole of their parents' estate may be used and they know that this would not have been what their parents wanted, if there was an alternative.

SOLUTION

All or part of the estate which belonged to the spouse who dies first can be held in trust for the benefit of the surviving spouse but then for the benefit of the children. The interests of the surviving spouse are protected and no-one else can benefit during their lifetime.

EXAMPLE

Mary and Bob provided details of their estate when they made their Wills. It was a long marriage and the children were all financially independent and able-bodied. The primary purpose of their Wills was to provide security for the surviving spouse but they wanted to protect an inheritance for their children and grandchildren after both had died. In their Wills Mary and Bob left their respective half share of the home into a trust for the sole benefit of the surviving spouse and named the children as the ultimate beneficiaries after both deaths. They left the remaining part of the estate to each other as an outright gift. This enabled the survivor to have control over the cash part of the estate and ensured that they had sufficient money to live on, without worrying about money.

At the same time as making the Wills, they altered the manner in which they owned the beneficial interest in the house to “tenants in common”. It is necessary to arrange this type of ownership to ensure that trust worked properly in the Will.

How does this Offer Protection?

The half share is held by the trustees on behalf of the surviving spouse but it is not owned by the surviving spouse and therefore it is not taken into account in the assessment of the surviving spouse’s means.

Points to Note

This type of trust means that the additional Inheritance Tax allowances connected to the ownership of a house and passing it onto lineal descendants (children, grandchildren and so on) are preserved.

This type of trust also protects the estate against other potential erosion, for instance through the re marriage of the surviving spouse. Note that a marriage revokes any existing Will and a new Will would need to be made in contemplation of the marriage and stating that it was not intended to be revoked by such marriage. This could be overlooked as part of the wedding plans.

Each family’s circumstances are different and this type of trust is suitable for some couples and not for others. It is essential to consider carefully the advantages and the disadvantages of each option.

It is crucial that the trustees are responsible, able and willing to act and that they will cooperate with each other and work for the benefit of the surviving spouse. There can be

no conflict of interest. Persons who have issues concerning gambling, debt, mismanagement of money, drinking, drug taking, matrimonial or other difficulties should not be appointed as trustees. Care needs to be taken regarding who is appointed.

All references to spouse include civil partners.

This is a brief introduction and I would be pleased to discuss your own circumstances in more detail and advise accordingly.

This is a basic guide, so contact us to talk about your wishes to enable us to advise you about your options and how we can help you.



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Naomi Pinder qualified as a solicitor in 1988 and for over 20 years she has specialised in helping clients in planning for the future through Wills, Trusts and Lasting Powers of Attorney; Probate and the administration of estates and trusts; capacity and Court of Protection; later life care planning and related elder client issues.

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