

Planning for the Future Series 3B

WILLS and TRUSTS

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

Will Trust for half of the matrimonial home, where the beneficial interest is held as tenants in common.

After the death of the first spouse, the surviving spouse is able (subject to the consent of the trustees) to move home and the terms of the trust are kept intact.

This provides flexibility for the surviving spouse but at the same time the assets are protected for the ultimate beneficiaries who are often the children and/or grandchildren.

In this factsheet, we will look at what happens if the house is sold.

EXAMPLE 1

John and Babs were married in 1975, John passed away on 1st June 2020 and his Will set up a trust in respect of his half share of the matrimonial home.

Babs now wants to move home to live closer to their daughter Tina.

The trustees of John's Will are Babs, Tina and her son Ian.

All 3 trustees – Babs, Tina and Ian are in agreement that Babs is able to move to live closer to Tina and she is looking forward to moving into a comfortable and warm new home.

The house is sold for £320,000, Babs still owns half of this sum which is £160,000 and the other half which belonged to John now is managed within his trust.

The new house costs £160,000 and money in John's trust is used to buy the new house which is also held in trust.

In other words, Babs does not own her new home but is able to live there until she passes away.

If Babs needs to pay for care in the future, she will be assessed upon her own assets but the assessment will not include the value of her home which is owned by John's trust.

When Babs passes away, her new home will pass to Tina and Ian in accordance with the terms of the Will.

EXAMPLE 2

Babs's new house costs £240,000.

The funds are provided from John's trust (two thirds) and the balance of £80,000 is paid from Babs's own share of the proceeds of sale of their house, which represents one third of the value of her new home.

The title to the new home will be held by Babs, Tina and Ian and there needs to be a declaration of trust prepared by the solicitor to state that two thirds is owned by the trust (and therefore protected) and one third is owned by Babs.

It is essential that this step is followed at the time of the sale and purchase.

NOTE – VERY IMPORTANT

Please note that Will trusts now need to be registered with the Trust Registration Service and there are strict time limits which apply, otherwise the trustees can face significant fines imposed by the HMRC.

This is a basic guide, so contact us to talk about your wishes to enable us to advise you about 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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