ProTrust
Estate Planning

Lifetime Trusts

(for the Family Home)

Guidance Notes

ProTrust
Estate Planning

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Introduction

The essence of this guidance is to explain the use of Lifetime Trusts for married or unmarried couples to protect assets so that they are able to pass to chosen beneficiaries as free as possible from attack of 3rd parties. We also provide a separate set of notes relevant to individuals (rather than couples) looking to gift assets in this way.

These are purely notes of guidance. They do not constitute legal advice as every case has its own set of facts and circumstances that affect reasons and choices made and you should consult us for formal advice on the matter that is tailored to your own circumstances.

The use of the lifetime trust is one method whereby you can retain a considerable degree of use and control over the assets for your lifetime but also to put in protection against 3rd party attack in respect of the assets being passed on eventually.

In these notes we shall focus on:

- a married couple,
- of approximate retirement age
- having children of the marriage
- owning a jointly owned property asset
- having overall combined joint asset value when combined with other assets not exceeding £1m (the usual combined Inheritance Tax threshold with RNRB tax allowance).

What is a Lifetime Trust?

In these notes, we are concentrating on one style of Trust for married couples, that has no definite name or label but which we would call a ‘Flexible Family Trust’. Technically it would comprise a ‘Discretionary Trust’ with ‘life interest’ elements within it for the married couple for their lifetimes.

Example: A married couple own a property jointly with estimated value of £500,000 and have capital of £100,000 between them, making a total combined estate value of £600,000.

Their requirements are that they retain the use of the property and have all the rights to use the capital for the rest of their lives. However, they would also like the value protected for their children and possibly also for any successive generations such as grandchildren.

Taking the above example of the married couple of retirement age, the Trusts we arrange a mutual set of ‘protection boxes’, comprising one box per spouse, housing a value (including the property equity) which usually will not exceed the Inheritance Tax threshold of £325,000 in each trust. The trusts are usually capped at £325,000 per person so that this does not cause trust taxation to apply (but first check you do not have other lifetime trusts set up as that can erode your allowance).

The Trust can be viewed as being like a ‘family box’ which is managed by the family members (as trustees) for the benefit of the family members (as beneficiaries).

The ‘box’ is in fact just one document called a “Settlement”. The clauses in the document guide the operation of any assets that are deemed to pass into the box.

How Does the Trust Operate?

In the above case, the spouses transfer legal title or the equity in the property to the Trusts but reserving within the trusts a full interest in the property for life.

That means that the couple have all the rights to live in the property, rent it out, move home to another home on the same basis. But the underlying capital ownership is held with the Trust and falls outside of the couple’s own Will and estate.

With cash or capital, some of that value can also be placed within the trust on the same basis. However, if one spouse dies, the survivor would only have right to the interest in their own trust (but would still have full use of the deceased spouse's trust value). So, care needs to be taken when drawing up the Trust to only include the right amount of capital – that is something we will discuss with you and advise you on.

Let us assume for now that there is no cash or capital put into the Trust. We shall assume it shall be the home/property only. The legal title to the property asset is usually retained in the names of the couple at the Land Registry with a 'restriction' to any other trustees; to show that the trust has been created and that it has an interest in the equity in the property.

Other than this, nothing needs to change whilst the couple are alive and living at the property. If the couple wish to sell the property, it is their prerogative to do so including instructing estate agents and proceeding. It is advisable to let us know before the sale process starts, so we can guide you on how the trust shall continue to be noted on the next property title. The couple as such 'own' the property and it is their main private residence for CGT purposes. The Trust has a 'debt' or loan to the value of the Trust that is secured by an equitable charge on the property.

Benefits to you and your Family

The Trust is effectively a protection 'box' aimed at ensuring that the only people who can benefit from it are yourselves and your family in the manner that ultimately your wills are set up.

There are several reasons for you placing the property into a lifetime trust structure, including:

- **Crystallisation of your wishes**: whereas Wills can be changed after one spouse dies and when the surviving spouse might be more vulnerable, these trusts are made when you are together and in good health and able to choose the ultimate destiny of those assets. The Trust you create shall own the asset but as trustees for your lifetime and as life-tenants of the asset(s) you still retain the day-to-day control and use of the asset.
- **Probate fees**: there is still much talk about a possible new tax/levy on applying for probate that is linked to the value of estate assets held on death. If you place the property into Trust during your lifetimes, there is no capital asset owned by you on death, it is not part of the valuation for probate purposes and it might save your estate extra money in possibly not having to apply for Probate.
- **General protection from claims of 3rd parties**: claims on the asset by third parties is limited as the Trust owns the debt against the asset. On your deaths, the value can be protected against

3rd parties by loaning the value to your children/grandchildren according to your Will provisions –the effect might mitigate their own IHT position; or provide a protection against a claim on a divorce. Additionally, as a further indirect consequence it may provide protection against claims for paying care fees.

The trusts shall be treated as the vehicle for you to pass your estate to the survivor of you– and then on the death of the survivor, unto your children (and on respective deaths, to any children they have– if those are your wishes). At each stage, it seeks to protect the value from attaching to claims from 3rd parties.

Some usual terms and clauses found in the Trust

"The Settlor": the person creating the Trust (ie one of the spouses)

"Trust Fund": the value or assets that pass into the Trust. When setting up the Trust, the asset is usually stated as *"my equitable interest in the property known as … having an estimated value at the date of this deed as being £……. and capped at a value of £324,999."*

"Beneficiaries": the list of the people who are chosen to benefit from the Trust. This will include the spouse, children, and descendants (but commonly this will not include spouses of children and spouses of descendants as the trust is designed to protect the value for the 'family line').

"Loan and Gift options"; provide flexibility in how the assets ultimately pass down the generations. Use of a loan is commonplace to ensure a degree of protection for children against 3rd party attack (divorce, insolvency etc).

"Trustees": shall be the people who control the Trust. As this is a lifetime trust (not a Will trust operating only on death), the Settlor can be a trustee. So usually, it is the couple themselves who are the primary trustees, possibly with one other independent trustee to guide them. New Trustees can be appointed by the Settlor during their lifetime or by remaining trustees following death of the Settlor.

Frequently Asked Questions

If the property asset goes into the Trust, upon a subsequent sale and downsizing, what happens to surplus proceeds of sale?

Proceeds of sale are usually kept separate from the couple's other assets and the spouses retain the 'life interest' element within that value. There is flexibility to pass capital use of that value to each other (while both are still alive) but any such capital use (ie the right to spend it) shall then not be part of the trust protection. So, it is common to keep surplus proceeds in an investment that just provides the spouses the 'income' within that value. We can advise on how best to administer the surplus proceeds in accordance with your wishes. As above, if you intend to sell the property, let us know in advance so we can discuss how any surplus funds are required for your use.

What is the ideal 'client status' for undertaking these sorts of Trusts?

Ideally: a married couple owning a property and in reasonably good health and of sound legal capacity to understand and execute documents.

Should any other Trustees be appointed?

You do not have to appoint additional trustees at the initial stage as you can add in further trustees in future. You both can be the joint trustees to commence with. However, it may be a good idea to have an expert advisor trustee appointed and particularly one who understands the future operation of these trusts. Please seek guidance from us in this regard. We have a set of notes available on the role of trustees and are happy to provide those to you for your guidance.

Where does this stand with regards future legislation or interpretation?

It is important that all options (including loaning value or gifting etc) are available to the trustees of the Will and trusts and that decisions are taken that are appropriate to the time, and according to the prevailing laws and interpretation. That is why a regular review and update is a good idea so that you are kept up to date with legislation. It is flexible to make outright gifts if there is a taxation reason not to adopt the loan structure.

Are these sorts of trusts only for the super-wealthy?

The answer is firmly, no. They are for couples having a property who are simply interested in ensuing that their children inherit their assets without attack from outside 3rd parties.

What are the limitations on setting up a Property Trust?

There are limitations in terms of the value that can pass through a Trust; there are taxes that apply for assets in Trust over £325,000 in value. Therefore, we generally advise that the value passing into the

Trust is capped at £325,000 (£650,000 per couple) which is possible even if the home itself is worth more.

Conclusion

The lifetime Trust is a popular and cost-effective method of choice for couples trying to protect their family home for themselves and their children. It is often a better or improved alternative to Trusts with Wills as it protects the whole home rather than just one half of it and it ensures a mutual crystallisation of the couple's wishes.

Contact Us

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