ProTrust
Estate Planning

Lifetime Trusts

(For an individual client protecting assets for his/her children)

Guidance Notes

ProTrust
Estate Planning

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Introduction

The essence of this guidance is to explain the use of Lifetime Trusts for an individual person with a property and who wishes to ensure it is protected to pass to their children on death but is concerned about future vulnerability.

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 (or "Living 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 to ensure smooth succession by your chosen family members on your death.

What is a Lifetime Trust?

In these notes, we are concentrating on one style of Trust that can have various aspects relating to it and thus no specific name or label but which we would call a 'Flexible Family Trust'. Technically it would comprise a 'Discretionary Trust' with a settlor retained 'life interest' element within it where necessary.

An example scenario:

An individual in their 70s owns a property outright (no mortgage) with estimated value of £500,000 and also has some capital of £50,000, making a total combined estate value of £550,000.

The individual needs to retain the use of the property for their own use for life and the right to sell the property and use the proceeds for providing another property or to have the income if invested. They express the wish not to retain rights to use the capital or underlying ownership. In particular, they are concerned at how they are increasingly vulnerable – relying on care now or expected in the future. This might be provided by one of their two children or by a private care company or even the state.

Their main wish is to protect their main asset (the property), against future vulnerability such that it passes free of challenge or claim to their children equally and possibly also protected, if possible, for any successive generations such as grandchildren.

In that scenario, the Trust we might arrange is a lifetime flexible family trust ("the Trust").

Key features & factors

The value passed into the Trust will usually not ever exceed the Inheritance Tax threshold of £325,000. The Trust are usually capped at £325,000 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.

Protection against 'vulnerability'

Vulnerability in this context means with reference to comparing the position of the individual in the above example, rather than if we were dealing with a couple.

The individual (say a widow(er)) is likely to be in a much more vulnerable position that a couple, who are no doubt entitled to rely on each-other's support and care.

Protecting against future irrationality or steps taken in gifting assets from a perceived dependent perspective, might be important.

How Does the Trust Operate?

In the above case, the individual transfers legal title or the equity in the property to the Trust but reserving within a full 'life interest' in the property's use for life.

That means that the individual (termed the 'Settlor' within the Trust documents) has all the usual rights of occupation and use of the property, including the right:

- to live rent free in the property,
- to rent it out and receive the income,
- to sell the property, move to another home of same value or less on the same basis.

But the underlying capital 'ownership' is held with the Trust and it falls outside of the individual Settlor's own Will.

In many cases, cash or capital can be placed within the Trust structure on the same basis. 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. In the majority of cases, it will be just the property asset and no capital within the Trust. Assuming that is the case, legal title to the property asset can be retained in the name of the Settlor at the Land Registry with a ‘restriction’ notice to the 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 Settlor individual is alive and living at the property. If he/she wishes 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 individual Settlor still has the property as their main private residence for CGT purposes due to the reserved life interest. The value still remains in the Settlor’s estate for Inheritance Tax (i.e. this is not a trust designed for IHT avoidance).

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.

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

- **Protection of your wishes**: Whereas will trusts can be changed by you unilaterally, lifetime trusts ensure more protection. From the moment of their creation, Trustees are involved to act and help you in the decision-making process. The Trust you create shall own the asset but you shall also be one of the trustees for your lifetime and as life-tenant of the asset(s) you still retain the day-to-day control and use of the asset or assets in the trust.

- **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 lifetime, 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 are more limited because the Trust owns the asset. On death, 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 potentially protect against a claim on divorce. Additionally, as a further indirect consequence, it may protect against claims for paying care fees.

Should any other Trustees be appointed?

You do not have to appoint additional trustees at the initial stage as you can add further trustees in the future. It may be a good idea to have an expert advisor trustee appointed 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 regard to 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 people owning property who are simply interested in ensuring that their children inherit their assets in the best and most protected way.

What are the limitations of 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 a Trust over £325,000 in value. Therefore, we generally advise that the value passing into the Trust is capped at £325,000 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 protecting the family home for themselves and their family and it ensures a crystallisation of wishes.

Contact Us

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