

Property Protection Trusts.



**New
Approach
Wills**
Modern Estate Planning Solutions

The Property Protection Trust

Don't let your property fall into the wrong hands

For the majority of people their home is their main asset. We know that you want to ensure that as much of your home as possible passes to your children and hence is protected from being taken by others. Here are some examples of how your home can be taken by others:

- Care Home fees
- Re-marriage (the new partner/spouse could end up with your house)
- Your surviving spouse having more children, diluting the share that should go to your children
- Bankruptcy (creditors trying to get their money back)

Most commonly one of you dies and the other has to go into care, or the survivor remarries and inadvertently or deliberately disinherits the children.

Care home fees

Should you need to go into care the Local Authorities assess both income and capital resources when they decide what funding or assistance with funding will be available.

If there is a shortfall in the amount of weekly income that you receive compared to the weekly care costs (bearing in mind that care costs can be anything from £350 per week to £1000 per week and not many people enjoy a pension and investment income of e.g. £700 per week) then they can use your capital assets to make up for that shortfall.

These include:

- Money held in bank accounts
- Money held in other investments
- Property

- Vehicles
- Stocks and shares

The current rules of assessment

If the value of capital assets are:

1. Below £14,250. This capital is disregarded and the local authority will meet the full costs of the shortfall.
2. More than £14,250 but less than £23,250. The local authority will fund part of the shortfall.
3. More than £23,250. The shortfall must be met from capital assets of the person needing care. This will almost certainly include anybody who owns a property.

The local authority may offer the patients family a deferred payment agreement whereby the authority meet the costs in the shortfall on agreement that these costs will be met in future on sale of the home perhaps when the patients has died. The agreement would usually be secured on the house by way of a land registry charge on the deeds of the house.

The local authority however will ensure that one way or another if the resident should pay for their cares costs then THEY WILL PAY. Unfortunately by the time the patient has died the fees may have taken all the value of the home.

What can be done?

If a property is owned as Jointly (Joint Tenants) and one of the owners dies then the surviving co owner becomes the sole owner of the property automatically. This "survivorship" law overrides Wills and the Laws of Intestacy. Hence you can not leave a jointly owned property in your Will as the survivorship law overrides your Will. Should the survivor (now the sole owner of the home) need to enter a care home, as we have seen the local authority can target the property as a capital asset and place a charge against the property to reclaim the costs of that care. If the costs

are large the local authority can take all the proceeds of the sale when it is sold, leaving nothing for your children.

If you own your home jointly (Joint Tenants) as most do, we can register a "Deed of Severance" for you at HM Land Registry which converts your ownership from joint tenants to tenants-in-common (TIC). If you own your home as TIC the survivorship rule does NOT apply. Hence you can leave your half of your home in your Will.

We can then draft Wills for you, that pass your share of the family home to your children in a Property Protection Trust, whilst still allowing the surviving spouse or partner to live in the property for the rest of their lives. This is known as a "Property Protection Trust Will".

If one of the co owners dies. Then the terms of the Will dictate that the deceased's half of the home is put in a Will Trust. The terms of the trust are in contained in the Will. This trust should be protected during the probate process, by adding a "form b" restriction to the title deeds and also adding the names of the trustees to the deeds. Should the surviving co-owner at some stage need to go into a care home, the local authority can only target the element of the asset that is owned by the person in care, which is half the property, thus ensuring that the children or other beneficiaries can at least inherit the other half of the home.

These Trusts can be used by anybody that co owns a home, e.g. married couples, civil partners, couples living together, allowing each individual to leave their share of the property to their children or family.

How it works in detail

As "tenants in common" each partner owns a separate and distinct share of the property (normally 50% each) and the "Law of Survivorship" does not apply, hence they can leave their own share to whoever they wish in their Will. They also stipulate that their spouse / partner has a life time interest in the home.

On the death of the first partner, the deceased partner's share of the house is left to chosen beneficiaries (e.g. children) in a Trust. This trust is effectively created when the first partner dies, by the Will. The surviving partner is allowed to continue living in the house for the rest of their life.

If the surviving partner then has to go into care, the deceased partner's share of the house **cannot** be assessed for care fees as that share does **not** belong to the surviving partner, it belongs to a Trust. The most that a local authority could therefore claim, to pay for care fees, is the survivor's half share of the house.



The beneficiaries of the first partner to die will inherit at least half of the proceeds of the sale of the property, when the second partner passes away.

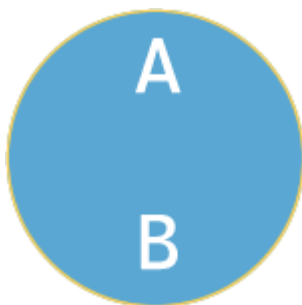
Other Benefits of a Property Protection Trust Will

An added benefit of a Property Protection Trust Will is its flexibility. For example, the surviving spouse can move house, downsize etc. The terms of the Trust will still apply to the new house. They cannot sell or spend the trust funds but the trust can be transferred to another house.

A "Property Protection Trust Will" can also be beneficial for young couples, couples with a significant age difference and couples who have children from a previous relationship. Should one partner die, there is a possibility that the surviving partner may re-marry or co-habit and have more children. If so, how can the original partner ensure that his/her children will inherit his/her share of the property? The answer is to make a Property Protection Trust Will, leaving his/her share of the house to his/her children either absolutely or in a Trust via the Will. The children will then be certain to inherit their parent's legacy on the death of the first or second partner.

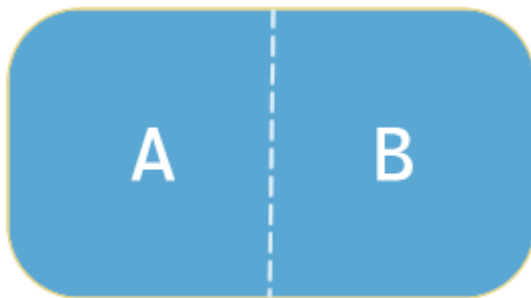
It is possible also to give your spouse / partner a lifetime interest in the house which ends if your partner remarries or co-habits with another partner.

Property owned as Beneficial Joint Tenants



Under the survivorship rule if e.g. A dies B would automatically become the sole owner of the entire home. The survivorship rule over rides Wills and intestacy rules.

Property owned as Beneficial Tenants in Common



Each person owns a separate distinct share of the property. The survivorship rule does **not** apply. Hence if A dies B doesn't automatically become the sole owner & you can leave your respective halves of your house to e.g. your children in your Will.

Frequently asked questions

Q. Why can't we simply give our house to our children / family ?

A. Giving your house to your children may be interpreted as "deliberate deprivation of assets" or a "gift with reservation of benefit" (GROB) particularly if you carry on living there and do not pay market rate rent. Local authorities can take the property back from the recipients if they can prove that the objective was to avoid care fees.

Please note - you should think very carefully before giving the whole or part of your property away to children or family members in your lifetime, because you could become homeless should your children divorce or get into debt or become bankrupt.

Q. Can a Property Protection Trust protect my children's inheritance if my spouse remarries ?

A. Yes. Should your spouse or partner, re-marry after you pass away, this could have a heartbreaking effect on where your property ends up. This is because the act of remarriage revokes (invalidates) any Will that your spouse/partner made whilst you were both alive, (however well intentioned) and the new spouse would then become his/her next of kin. Under Intestacy Laws the new spouse would receive the first £250,000 of your spouse/partners estate plus chattels, and half of the remainder of the estate in trust.

However, if you have a Property Protection Trust Will, your half of the house is protected by the trust and will pass to your children at some point in the future.

Usually when the house is sold, or when your spouse or partner remarry or cohabit with another partner depending on choices you make when we draft your Wills.

Q. If a Property Protection Trust is set up can the surviving spouse / partner ever move house again ?

A. Yes, you can move house. The terms of the trust are flexible. We can ensure that the person living in the property has the option to move to a new property if he or she wishes. If for example the house is too large and there was a desire to move to a smaller property. This is what would happen:-

Suppose Mr & Mrs Adams own a house valued at £400,000. They have a Property Protection Trust Will and then Mr Adams passes away. Mr Adams half of the house is put in a trust. At some point in the future Mrs Adams decides to move to a property valued at £200,000. She can sell the house and use Mr Adams' "Trust" of £200,000 to buy the new home. Mrs Adams can then do as she wishes with her £200,000.

The Trustees of Mr Adams' estate would own 100% of the new house, but Mrs Adams can still live there for the rest of her lifetime. The ultimate beneficiaries (normally your children) are not affected. Neither is the value of their inheritance, since usually a rise or fall in property values, is across the board and not unique to a single property type.

Q. What if the new home was not conveniently half the value of the original ?

A. If the new house is priced at e.g. £250,000 Mrs Adams could use Mr Adams' £200,000 trust and add £50,000 to it herself. Thus, Mrs Adams would own a fifth of the new property and the Trustees would own four fifths.

Q. How would we keep track of such details ?

A. There can be a separate deed setting out the shares in the property and how the proceeds of sale would be divided if the property was sold. Such a document is usually called a 'Trust Deed' or a 'Declaration of Trust'

Q. If I needed a mortgage to improve my home, and half of the house is in a Property Protection Trust because my spouse has died. Would I be able to get a mortgage?

A. There could be a problem with this. The lender would require a "first legal charge" over the property, so the presence of other named individuals on the deeds may put



them off. The lender's conveyancer has to deliver to the Lenders an "*unqualified certificate of title*" effectively meaning there is no risk and no reason why the mortgage monies should not be advanced. They may not want to do this if they see trustee's names on the title deeds, as well as the surviving co-owners name.

Q. Can the children force me out of the house?

A. No. The terms of the trust dictate that they will only inherit when both of you die, just as they would normally.

Q. Do Property Protection Trust Wills help avoid paying inheritance tax ?

A. No. They have a neutral affect on IHT. Since your partner has the right to use your half of the house this is regarded as though he/she owns the property for the purposes of calculating death duties. The sole benefit of Property Protection Trust Wills is avoidance of sideways disinheritance.

Q. Can the Government change the rules to make this invalid ?

A. It would be very difficult. In your Will you are entitled to do what you like with your half of the home. This is known as testamentary freedom which is ingrained into English law, as is the right to own your home as tenants in common. As more people protect their homes, the government will be under pressure to change the current ludicrous situation, whereby those that have worked hard all their lives lose their homes to pay for their care costs while others (who may not have worked so hard) get theirs paid for totally free.

Q. Are Property Protection Trust Wills and "tenants in common" effectively a legal loop hole

A. No, they are not a legal loophole, Tenants in Common is just a different way of owning a home, and has been for a very long time.

Q. Isn't this deliberate deprivation of capital assets

No, isn't, because the gift is made in the Will, the person making the gift has died and will therefore never need care. Whatever their spouse happened to do during their lifetime, or on their death through their Will, is beyond the control of the person needing care.



Q. Why not put the whole of the house in trust ?

A. If the house is owned as a Sole Owner in the name of e.g. Mr Adams then he could technically put the whole of the home in trust for the children and allow Mrs Adams to live in it for the rest of her lifetime. If she requires care after his death then the whole of the property may be safe. But, if she dies first and Mr Adams needs care, then the whole house is at risk since his trust is only activated by his death, by which time, care cost fees may have drained the value of his estate.

Q. We do not have children, can we still have a Property Protection Trust Will ?

A. Yes, you may wish to leave your property to another relative e.g. a favourite niece, or to your favourite charities.

Q. Will this protect the home if we both require care?

A. No. The trust is activated by the will on the death of the first spouse/partner, and not at the time of executing the Will. If you are both alive and in care, the trust would not be initiated, hence the local authorities can target the property when assessing liability for care fees.

Q. How could our home be protected if we both required care?

A. We also offer a lifetime trust called the Family Protection Trust. It is a more expensive trust, but it can protect a home under these circumstances. But it cannot be set up if you have already been diagnosed with an illness that may cause you to require care.

Q. Does the survivor need to pay tax relating the Property Protection Trust ?

A. No, the Property Protection Trust is known as an "Immediate Post Death Interest Trust".

Even though the survivor of the first death doesn't have a financial beneficial interest in the half of the house in trust, it is still considered as part of his/her estate for inheritance tax reasons. Hence it is not taxed as a Trust.

Q. I have some investment properties (buy to let) that I jointly own with my wife. Can a property protection trust prevent these from falling into the wrong hands?

A. Yes. Owners of investment properties generally have 2 choices.

1. You can leave your half of the properties to your children absolutely (immediately upon your death). In this case your children would immediately be entitled to half of the rental proceeds and any proceeds from the sale of your properties.
1. You can elect to leave your half of the properties to your children in a trust and give a life interest to your spouse in the properties. Your spouse would then be entitled to the income arising from the properties, for example rent, for the rest of her life. As soon as a property is sold the children would be entitled to half of the proceeds.

Q. I am a single person and sole owner of our home can the property protection trust help me?

A. No the trust is only suitable for joint owners. If you own the home as a sole owner and wish to protect it then you need a life time trust, such as our Family Protection Trust.

Q. If the Will creates the trust on first death why does a restriction need to be added to the title deeds?

A. Technically it doesn't, but we see it as an important protective measure. A "form B" restriction on the deeds informs a conveyancer of the Will trust and just like a mortgage restriction, it cannot be ignored.

Q. What if on first death the survivor decides that they do not wish to set up the trust after all?

A. Provided that all the beneficiaries (those that would inherit the half of the house that is in trust) agree, and are aged 18 or over, you can organise a "deed of

variation" and effectively alter the Will of the person who has died and leave his/her half of the house to e.g. the surviving spouse instead putting it in a trust..

Q. I'm sure I read somewhere that even if you own a home as tenants in common the survivor still becomes the sole legal owner.

A. That is technically true. There are two "levels" of ownership with property law, the legal estate and beneficial interest (also known as equitable interest). The holders of the legal estate are the ones who need to sign any conveyancing forms on sale, however the owners of beneficial interests are entitled to the proceeds of any sale or rent etc.

The beneficial interest (equity) is of more importance than legal ownership. For example, the fact that one person is the sole legal owner does not mean that they are entitled to the property, as it is the **beneficial owners** who would be entitled to the proceeds of sale if the property were sold. Legal Ownership does not affect who is entitled to the proceeds' of sale.

Legal titles etc. of property law are quite complicated. I usually find the following a more simple way of explaining tenants in common to the lay person.

Imagine a couple A and B have a biscuit tin full of money. There are two elements. The tin (the legal estate) and the money (the beneficial interest).

If A and B are joint tenants they are each entitled to both the tin and the entire contents.

If A dies, B gets the tin and all the money.

If A and B are tenants in common, they are each entitled to the tin. However, they will have a share, usually half each, in the money. If A dies, B gets the tin. However, B is entitled only to his/her own share of the money. A's share will be looked after by trustees for whoever is entitled to it.

New Approach Wills

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