

# Life Interest Trust Wills



**Forrester Sylvester Mackett**

SOLICITORS

*What matters to you matters to us*



The majority of couples make mirror Wills leaving everything to the survivor on death. Whilst there are many situations in which this is the right solution, there are some circumstances where it is a disadvantage. For example:

### **Survivor remarries**

If the survivor remarries, their Will may be automatically revoked by the marriage. Or they may forget to make a new Will and the entire estate could pass to the new spouse. This could result in any children of the first relationship losing out on an inheritance.

### **Survivor needs long term care**

If the survivor becomes ill, to a degree that they require long term residential care, an assessment will be made of their financial situation. This would include anything that they had inherited when the first spouse died. Depending on the amounts involved, and the time spent in residential care, almost all of the estate could end up being used to fund care.

### **Survivor alters their Will**

The survivor is free to alter their Will after the first spouse has died. This could result in the preferred beneficiaries of the first spouse losing out on an inheritance.

### **Why should I make a Life Interest Trust Will?**

With a Life Interest Trust Will each partner can protect their share of the assets for their preferred beneficiaries (often their children), whilst still allowing the survivor to enjoy the benefit of the assets for their lifetime.

A Life Interest Trust Will can help ensure that some of your assets are protected from care fees, and are passed to a beneficiary of your choice.

**Get in touch with our Wills, Trusts and Probate team for expert advice about the correct type of Will for you and your family.**

### An example:

Julie and John own a property worth £250,000 and they have joint savings of £20,000. Julie has complex health needs and moves into a care home.

#### Without a Life Trust



Julie and John have Wills leaving everything to each other outright.

John carries on living in their property, so it is not included in Julie's financial assessment.

John dies. All of the house and money now passes to Julie. Julie is therefore required to pay all of her own care fees.

After 5 years her assets have dropped below £14,250\* and her fees will be met by the Local Authority.

When she dies, her children get the amount left, which is less than £14,250.

#### With a Life Trust



Julie and John have made Wills leaving each other a Life Interest Trust in their half of the property.

John carries on living in their property, so it is not included in Julie's financial assessment.

When John dies, Julie retains her half share of the house, and all of the savings. The house is sold and John's half of the money is invested.

Julie's care fees are paid from her half of the house and the savings. She receives the income from John's share of the house. When Julie's savings fall below £14,250 her care is funded by the Local Authority.

John's £125,000 is held in trust, and so cannot be used to cover Julie's fees.

After Julie's death, John's £125,000 goes to their children as well as Julie's remaining £14,250.

In this scenario, Julie and John have saved £125,000 in care fees. As well as protecting the house, it is possible to protect other assets such as savings and investments if the couple wish to extend the extent of protection within the Life Interest Trust.

Life Interest Trust Wills need to be drawn up with sufficient flexibility, allowing the surviving spouse to move home or invest the trust money in some other way. It is important to understand that the surviving spouse has a right to the income but they are not generally entitled to spend the capital of the spouse who has died first.

\*Figures correct as at January 2020

## Will Life Interest Wills also save us any Inheritance Tax?

No, a Life Interest Trust will not save you any Inheritance Tax A Life. However, tax is a complex issue and we advise you to take proper legal advice about the consequences of your Will to make sure that it is drafted in the most tax efficient way.

## What else do we need to do to make sure that our Life Interest Wills work?

**Appoint Trustees:** Trustees will be the people who are responsible for the Trust when the first spouse dies. Your Trustees can also be your Executors. It is also possible for beneficiaries to act as Trustees. It is important that the Trustees are trustworthy and that they can get on with each other and the surviving spouse.

## Make sure your property is held in the right way so that it can pass into your

**Trust when you die:** Most couples own their home as 'Joint Tenants', meaning that when the first spouse dies, their share of the home will pass immediately to the survivor. It is very important that the ownership is changed to '**Tenants in Common**'. This means each spouse owns their share, and each owners share will pass according to their Will.

This can be achieved by both owners signing a simple document called a 'Notice of Severance'. This is then registered with the Land Registry or placed with the Title Deeds to your property.

## What might we need to do when the first spouse dies?

When the first spouse dies, it is usually recommended that the names of the Trustees at that point are registered on the Legal Title to the Property to ensure that trust assets are protected. In order to do this a Grant of Probate is often required and this can incur legal costs with the Land Registry. Often the potential savings far outweigh any legal costs but if you are worried about this you should speak to your legal adviser. We suggest that on the death of the first spouse, the Trustees take advice to ensure that the assets are suitably protected and to avoid undue costs or delays at a later date.

CHIPPENHAM

01249 444300

FROME

01373 485485

MALMESBURY

01666 822671

SWINDON

01793 522688

TROWBRIDGE

01225 755621

WARMINSTER

01985 217464

[enquiries@fmsolicitors.co.uk](mailto:enquiries@fmsolicitors.co.uk)

[www.fmsolicitors.co.uk](http://www.fmsolicitors.co.uk)