T: 01636 302321
E: info@monumentfp.co.uk
W: www.monfp.co.uk

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MONUMENT FINANCIAL PLANNING

Protecting Your Home with a 'Property Trust'

Most people work extremely hard during their lifetime to own their own property, and therefore want to ensure that their property or the sale proceeds will pass to their loved ones when they pass away. Unfortunately, there are events that can prevent this from happening.

One event is where the surviving spouse or partner remarries and then:

- **Dies** before the new spouse leaving no valid Will and then everything will pass by the Laws of Intestacy to the new spouse therefore disinheriting your children or loved ones
- **Or,** dies leaving everything to the new spouse or partner by Will and disinheriting your own children or loved ones
- **Or,** divorces, losing 50% or more of the estate (your children's inheritance)

Another possible event is where:
The surviving spouse or partner owns a property jointly (by selling the existing property and using the proceeds to purchase a new property) with a new spouse or partner and dies first. The property passes automatically to the new spouse/partner disinheriting your children or loved ones.

The third possible event is:
Your surviving spouse or partner suffering a physical or mental illness and needing care home facilities in the future, the assessment by the local authority is likely to take the property into account. Therefore, if your property is owned jointly then the surviving spouse or partner will become the sole owner, this means that 10 % of the property will be taken into account to pay for the survivor's care.

The potential pitfalls listed above can be avoided, ensuring that your children or loved ones still receive the first deceased persons share of the property without disadvantaging the surviving spouse or partner. Here's how:

Own the property as tenants in common instead of joint tenants, a Property Trust is drafted into your Wills. On first death the deceased's share is then placed into the Trust instead of passing onto the survivor.

The deceased leaves a 'life interest' in their share of the property to the surviving spouse or partner, so that the survivor continues to live in the property as normal until their death, often with the power to sell and purchase alternative accommodation.

This means that the first deceased's share of the property is looked after by Trustees appointed in the deceased's Will, one of the trustees is very often the surviving spouse. The trustees manage the trust until the death of the survivor, and then the trust assets pass to the ultimate beneficiaries.

Should the survivor need care home facilities in the future, then the local authority assessment can only take the survivors share of the property into account.

Should the surviving spouse or partner remarry, the new spouse or partner cannot receive any part of the first deceased's share of the property because it is protected by the trust. **(Please note this trust does not come into force until first death).**

The Asset Protection Trust (Home Protection Scheme)

The Home Protection Scheme differs to the Protective Property Will Trust as it is set up during your lifetime, and is totally separate to your Will.

It involves transferring 10 % of your home into a trust giving you the guaranteed benefit of knowing that whatever happens to you in the future, the full value of your home will pass to your beneficiaries.

You set up the trust giving yourself a 'life interest' in the property, so that you may continue to live in the property for the rest of your life, or until you decide not to live there anymore.

Even though the Trust owns the property you still retain the benefits of home ownership (the trustees are very often the ultimate beneficiaries). If in the future you wish to move to a smaller property, you would still retain all the residential rights in the new property.

The benefits in passing control of your home to the trustees, which can also include you.

Ensures that your home will pass to the individuals that you choose to benefit upon your death or sooner if you wish.

Enables your home to be held for individuals that cannot hold it for themselves for example, children or disabled persons.

Prevents any claim on your estate under the Inheritance (Provision for Family and Dependants) Act 1975, preventing any challenges against your wishes upon your death.

Protects the property from passing to a future spouse or partner before or after your death.

Protects your home from spendthrifts, creditors, and bankruptcy.

Keeps the ownership of the home private and secret.

Allows the trustees to rent the property immediately after your death or if you no longer wish to live in the property.

Provides the trustees with the power to manage the trust assets should you lose the mental capacity to manage your own affairs, and enables your trustees to maintain your property during your old age and any long term illnesses.

Your wishes are specifically set out during your lifetime.

Speeds up the administration of your estate by avoiding the need of a grant of probate on the property.

The advice given by us is fully compliant with the Care Act 2014, and we will not set up these trusts for those whose sole intention is to deliberately deprive Local Authorities of their assets.

Source: www.citizensadvice.org.uk/family/death-and-wills/who-can-inherit-if-there-is-no-will-the-rules-of-intestacy/

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