

# PROTECTIVE PROPERTY TRUSTS



For most people, their home is their main asset which is no wonder why they are keen to protect and preserve the value of it for their families and loved ones, against circumstances outside of their control.

There are a number of options available to you and we would therefore suggest that you make an appointment to see one of our experts to assess your own personal circumstances and the best option for you.

One such option would be to consider settling your property into a trust. This would mean that you no longer technically own the property, but you would remain the primary beneficiary of the trust until you die. The trust provides a protective shell so that the value of your home cannot be taken into account for purposes outside of your wishes. The trust also protects your right to continue living in your home.

## WHAT IS A TRUST?

A trust is a legal arrangement where you entrust the legal interest of cash, property or investments to someone else so they can look after them for either your benefit and/or your chosen beneficiaries.

There are some important roles and terms within a trust that you should understand:

**Trustees** – these are the people who own the legal interest of the assets in the trust. They have the same powers a person would have to buy, sell and invest their own property. The Trustees have a legal duty to run the trust and manage the trust property responsibly. It is extremely important that you choose your Trustees carefully. Your Trustees can include your family members, but in most circumstances we would also advise that you have at least two independent professional Trustees such as partners of Wilson Browne, who will act in your best interests at all times and ensure your wishes are carried out. You will require at least two Trustees and generally can have a maximum of four.

**Life Tenant** - this is the person(s) who has a **life interest** in the property which means that as long as the property still exists they are entitled to live there rent free for their lifetime. If the property is ever sold and converted into cash, then this person is entitled to any income produced from those proceeds of sale. They are also able to benefit from the net proceeds of sale at the discretion of the Trustees.

**SETTLOR** – the person(s) who put their assets into a trust when it is created.

**DISCRETIONARY BENEFICIARIES** – the people who, at the discretion of the Trustees, could potentially benefit from the trust property.

## HOW DOES THE TRUST WORK?

When you set up the trust, you decide the rules about how it is managed. You will need to transfer the legal title of the property into the names of your chosen Trustees. You will be the Life Tenant of the trust and the terms of the trust give you a life interest as detailed above.

The Trustees are able to sell the property and purchase an alternative property for you to live in if you wish and any subsequent property will also be held by the Trustees subject to the terms of the trust.

## IS A TRUST SUITABLE FOR ME?

Each client is different so it would be better if you were to come in and speak to one of our experts about whether or not a trust is suitable for you. There are also lots of considerations for you to have which we would need to discuss with you based on your particular circumstances.

There are other options available such as dealing with your property under your Will to protect at least half of it and this option may be more suitable to you.

As a brief overview, you could consider putting your

property into trust during your lifetime if:

- It is mortgage free (if there is a mortgage any lender would need to agree to the transaction which they are unlikely to do).
- The value of your home is under the current nil rate band i.e. £325,000 if you own the property alone or £650,000 (£325,000 x 2) if you own the property jointly with another person. Otherwise there could be lifetime inheritance tax charges when making the gift into trust.

## WHAT HAPPENS IF I HAVE TO GO INTO CARE AFTER PUTTING MY HOUSE INTO TRUST?

Provided that sufficient time has passed since placing the property into trust (we would say at least 5 years) then the local authority cannot assess you as owning your own home unless they can show that you intended to deprive yourself of capital to avoid paying care home fees. However, the more time that passes between placing your property into a trust and you going into care, the more difficult it will be for the local authority to argue that you intended to deprive yourself of capital.

We would therefore recommend that you consider this option as early as possible and certainly well prior to any indication that you may require long term care in the future, and discuss any current health care considerations with us.

## WHAT HAPPENS TO THE TRUST AFTER MY DEATH?

Unless you say otherwise we would transfer the trust fund (which may consist of the property or cash if the property has been sold) to your chosen beneficiaries as per a letter of wishes that we will help you to prepare when setting up the trust or alternatively as per the terms of your Will. This will have the effect of ending the trust. Your chosen beneficiaries could be your children, grandchildren, other family members, friends, charities or a combination of any of these.

## WHAT ARE THE TAX CONSEQUENCES?

You should be aware that this type of trust is known as a relevant property trust which have their own tax regime as detailed below. The tax implications can be complex but we can advise you on these when considering whether a trust is right for you.

## INHERITANCE TAX

### TEN YEAR ANNIVERSARY CHANGES

HMRC make a charge for Inheritance Tax every ten years during the existence of a trust, sometimes referred to as the "periodic charge". The ten year anniversaries are counted from the date of the creation of the trust. The periodic charge calculation can be complex but will be a maximum rate of 6% on the amount by which the value of the trust fund exceeds the nil rate band applicable at the time. The current nil rate band for 2019/2020 is £325,000 per

individual and is set to remain at that level until at least 2021, however, this may change in the future.

## DISTRIBUTION TO BENEFICIARIES OR WINDING UP OF THE TRUST ("EXIT CHARGES")

There may also be a charge to Inheritance Tax when the entire trust fund or part of it is distributed to one or more of the beneficiaries, sometimes referred to as the "proportionate charge". This will depend on the total value of the distributions made in the previous ten years of the trust and the value of the trust. The maximum rate at which tax could be charged is 6%.

If the value of the trust fund remains below the nil rate band, there will be no Inheritance Tax to pay in your lifetime.

## CAPITAL GAINS TAX

As you have a life interest in the property you should remain eligible for the principal private residence relief for Capital Gains Tax purposes which means there should not be a Capital Gains Liability if the property is sold immediately on your death or upon you ceasing to permanently reside in the property. Your Trustees should seek advice on all tax matters to ensure they are compliant.

## TRUST REGISTRATION

There are triggering events that will require your Trustees to formally register the trust with HMRC and file trust tax returns. These will only be relevant when the value of the trust exceeds 80% of the available nil rate band i.e. currently £260,000 per trust or £520,000 for two settlors. There will be legal costs involved with the registration and filing of the tax return and your Trustees should seek advice at that time. These trigger events are:

- a) An appointment of capital out of the trust (either the entire trust fund or part of it); and
- b) The ten year anniversary of the trust (see above).

## SUMMARY

There can be many advantages in putting your property or other assets into a trust. We would suggest that you make an appointment to come and see one of our trust experts to talk through your own personal circumstances and we can advise on what we feel would be best for you.

If you would like further information or advice about protecting your assets or long term care then please do not hesitate to contact us to make an appointment.

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