
Life Interest Trusts: Second and subsequent marriages – protecting property and assets for your children

We advise many clients when it comes to planning for the future.

One recurring theme concerns how best to protect children from losing their inheritance, if a spouse or partner remarries, or enters into a new relationship, after the first spouse or partner has died.

It is also important to consider this if you already have children from a previous marriage, and you want to make sure that they are protected.

Making provision in your Wills

It is fairly common for couples to arrange their Wills so that on the first death, everything passes to each other, and then to the children after the surviving spouse or partner has also died. These are commonly known as 'Mirror Wills'.

However, even if you both chose to leave everything to the children on the second death when you make your Wills, there is nothing to stop your surviving partner from changing his or her Will at any point in the future.

This could mean them disinheriting the children in favour of a new partner, or children from a previous or subsequent relationship.

There are measures that we can take however, to safeguard some or all of your children's' inheritance, to prevent your surviving partner from giving the property and assets that they receive from you, to someone else, either during their lifetime, or in their Will.

How?

We can set up what's known as a life-interest trust in your Will. This ring-fences some or all of your estate from being redirected to someone else after you have died, whilst still allowing your partner to continue to have the use and enjoyment of your assets for the rest of his or her life.

Although this arrangement can be used in a number of situations, it's often discussed in the context of advising couples with children, whose main asset is property, and it works like this:

- On the first death, half of the main home passes to the children, with the condition that the surviving partner can live there for the rest of his or her life;
- If you wish, you can also add in wording to say that their right to live in the house ends if they remarry, enter into a new civil partnership, or co-habit with a new partner.
- It is important to ensure that the property is held in such a way as to allow you to leave your share in accordance with your Will, but we would take care of this at the Land Registry, if necessary;
- This earmarks at least half of the property for the children in the first instance, and prevents the surviving partner from giving this half to someone else, either during their lifetime, or in their Will;
- Consequently, it would also prevent the whole of the value of the property from being taken into account, should the surviving partner require means-tested residential care in their later years.

A life-interest trust is a flexible arrangement, as although there is a Trust in place, it still allows the surviving partner to sell the property and downsize in the future, if needed.

Any capital belonging to the Trust and not used to buy a smaller property would be invested to produce an income for the survivor, whilst continuing to safeguard the capital for the children.

This means that even if your surviving partner remarries, has more children, or simply changes their Will at a later date, although their own half share of the house may be given to whomever they choose, the half of the house from your estate cannot be redirected, as it belongs to the Trust and not to them.

On the death of the surviving partner, the trust can then be wound up with all of the capital passing to your children.

This arrangement can also be put into place for other assets, such as accounts and investments, not just property. Where accounts and investments are subject to a life interest trust, the income produced from the assets would be available for use by the surviving partner, whilst the capital is earmarked for the children as set out above.

Get specialist advice from a Solicitor

As with any arrangement concerning trusts, it is important to consult a solicitor, regulated by the Solicitors' Regulation Authority (SRA), specialising in this type of work.

Roche Legal is a regulated and specialist firm dealing with Wills and trusts, inheritance matters, probate, powers of attorney and the many legal considerations that become important as you get older.

We can answer all of your questions about life interest-trusts and how best to protect assets for future generations.

If you'd like more information call **01904 866139** or email
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