

Charterhouse Inheritance Planning

In partnership with

CM Charterhouse Associates Trustees Ltd

Wills and Discretionary Family Trusts

Introduction:

Everybody wants to protect their assets for the benefit of their loved ones. People are motivated to provide for their children throughout their lives and want what is best for them. Many people will draft a Will hoping to ensure that the assets that they have worked hard to acquire during their lifetime, are passed on to their children and chosen beneficiaries after their death.

However, a Will can only dispose of the assets that you own at the date of your death and if the value of these is eroded during your lifetime, there will be little if anything left for your beneficiaries to inherit.

There are many risks that can seriously devalue an estate during, and after, your lifetime –

- ***Expensive Executry*** (commonly known as Probate) costs – this is the legal cost of formally “winding” up your estate by a solicitor via the courts. The cost of this is normally between 2% and 5%, of the total value of your estate, and this is governed by the complexity of the estate - and can easily run into tens of thousands of pounds. For example, for an estate value of £200,000, you should expect an executry cost of between £4,800 and £5,800. Moreover, there will be a substantial delay in the completion of the estate – this can take up to 3 years to be completed, and sometimes longer
- ***Contribution to care costs***. Care costs are becoming a major concern for most families, especially as the costs are now extremely high. Official figures show that in the UK, 1 in 3 women and 1 in 4 men will spend a period of time in full time care – and this will have a serious effect on family finances, with many homes being sold each year in the UK to pay for accommodation and care costs. Where the house is owned by a married couple/civil partnership, then the home will not necessarily be required to be

sold. However the local authority may in that situation take out a “charging order” on the property, which means they will recover the debt to them for care costs at a later date when the property is sold on the death of the other spouse/partner, or when the other spouse/partner sells the house to move to another property

Another factor to consider is that wherein you have a nice little “nest egg” to keep you in a comfortable standard of living after retirement, these savings are vulnerable to care cost assessment and will most probably reduce dramatically – *this will seriously affect the standard of living for you spouse/partner remaining in the property.*

- **Inheritance Taxation (IHT).** A single person has an IHT allowance of £500,000 and a married couple £1,000,000 – if their named beneficiaries are their children. The current IHT taxation is set as 40% of the excess.

Assets passed on to your children will form part of their estate for Inheritance Tax calculations. The current rate of IHT is 40% of their total estate value, after the threshold allowance. It is therefore good sense to be aware of your children’s financial situation, as this problem can be avoided.

You should also be aware that if your beneficiaries are not to be any children of you, then the IHT allowance reduces to £325,000 for a single person, and £650,000 to a married couple.

- **Capital Gains Tax (CGT).** If your children inherit property from you and they do not reside in that property permanently they will subsequently face Capital Gains Tax when they sell or transfer the property after 9 months of inheriting. The current allowance against capital gains is £3,000 per person
- **Gifting assets to family.** In the past, some people have transferred an asset (or assets) to their children whilst still living, as they have seen this as a way of avoiding certain taxation and other risks to their estate. However, there are many dangers associated with this action. In transferring a property or other asset, then they no longer have control of what happens to that asset. If the child becomes enmeshed in debt, then the property would be sold to settle with the child’s creditors, and the original owner would no longer have a roof over their head. If the child became incapacitated, then who would have control of the asset – if

married/in a civil relationship, the control would most probably pass to their spouse/partner, and this is a situation most of us would not wish to happen. If the child subsequently faced divorce proceedings, then the gifted property may become vulnerable as part of any divorce agreement. If you transfer the property to a child, and the child does not reside in that property, then they will face a capital gains tax issue when they ultimately come to sell the property. If you go into care, the local authority will most probably deem the transfer to be considered a deliberate act of deprivation of assets – and this would result in the property being sold to meet care costs – and if your spouse/partner is still living, they would no longer have a home to live in

Family Trusts:

Family Trusts are specifically designed to protect your assets for you and your family during your lifetime. They give you the peace of mind that your estate can be passed on securely and intact to your spouse, your children and their bloodline, or other named beneficiaries, after your death.

What a Family Trust can do for you

A Family Trust bypasses the expensive and time-consuming process of Probate, and the assets held within your Trust can be managed by the trustees without the need to wait for the Grant of Probate from the Court. Note: the Probate process can take anything from 18 – 36 months to complete, and sometimes longer depending on the complexity of your estate.

You will remain in control of your assets in your Trust – you decide on the trustees and what they can and cannot do. This is beneficial if at some/ /some point in the future you are unable to manage your financial and legal affairs due to incapacity such as dementia or a serious illness.

A Family Trust can protect your share of assets for your children in the event that your partner should marry or co-habit after you have gone.

Furthermore, assets within your family Trust can be dispersed unequally to your beneficiaries as the Trust is not governed by the laws of succession – you can safely, if it is your wish, disinherit a relation who could normally challenge for their legal right of inheritance.

To summarise –

- **No Executry (Probate) costs.** The current cost of winding up a Family Trust is £1,500 (+ £80 outlay per property in Trust) and doesn't have the restriction of long delays in completion.
- **Exemption from IHT.** All assets held in a Family Trust are exempt from IHT calculations after 7 years.
- **Protection from Legal Rights to Inheritance.** Assets placed in a Family Trust do not form part of the deceased's estate and are therefore excluded from the legal rights issue. This allows you (if you wish to do so) to disinherit children or other potential beneficiaries. Alternatively, you could limit the share (or amount) any beneficiary was to inherit
- **Control of beneficiary inheritance.**

Family Disinheritance (or sideways disinheritance): This is a situation which most people do not normally foresee, but this/ /problem can have serious repercussions. This commonly occurs when a widow or widower remarries. For example, let's take a married couple who have 2 children. The husband dies first and leaves all his estate to his wife. Subsequently his wife remarries, and her new spouse already has children from his previous relationship. When she dies, her whole estate passes to her second husband. When her second husband dies, his whole estate will devolve to his children. Ultimately, this results in the original 2 children from her first marriage being disinherited, as they do not have a claim of legal right on the second husband's estate, and do not get anything. Furthermore even if the second husband had changed his Will to include her children at the time of their marriage, he can of course change this at any time and effectively disinherit them

Disabled or unreliable beneficiary: At the present time or maybe in the future, there may be a child, relative or other beneficiary who has a disability – whether it is a mental, physical or psychological disability. Or there may be children or relatives with problems whether it be drug, alcohol or gambling problems. Under any of these circumstances, when you die it is not therefore advisable that a large share of your estate devolves immediately to such beneficiaries – but of course that is normally what happens. If your main assets are within a Family Trust, then your trustees have the discretion as to when any potential beneficiary receives their

inheritance – and this could be in instalments. If the beneficiary has a disability that results in them not able to manage their affairs, then your trustees can manage this for them. If the trustees consider a potential beneficiary to be totally unreliable financially, they may withhold any inheritance payment to that person

Beneficiary Divorce/Separation: If any of your beneficiaries are facing divorce/separation proceedings, or simply in an unstable marriage or relationship, then their inheritance from you would be at risk from their spouse/partner.

Bankrupt / Irresponsible beneficiaries: The situation wherein a child or relative who is a beneficiary of your estate is (or becomes) bankrupt. Normally when you die, they will inherit from you and that inheritance would be lost to their creditors in bankruptcy. Or it could be simply that the beneficiary is just financially irresponsible – resulting in them wasting away the inheritance you have left them. When your assets are sitting within your Family Trust, then any /potential inheritance to be paid to a beneficiary who is facing bankruptcy (or already in bankruptcy), then that beneficiary's inheritance can be retained within the Trust until they are clear of bankruptcy. Since the beneficiary has not actually received that inheritance, it cannot be deemed as part of their assets and is safe from creditors in bankruptcy.

Passing on an IHT burden: Assets passed on to your children will form part of their estate for Inheritance Tax calculations. The current rate of IHT is 40% of the total estate value, after the threshold allowance. It is therefore good sense to be aware of your children's financial situation, as this problem can be avoided. If the asset(s) is in your trust, then the beneficiary can opt simply to leave it in your trust. They can then either take it when the time is right financially, or even bequeath it within their Will for their own beneficiary/beneficiaries. A Family Trust does not need to be completely “wound up” when you die and can run on for a further 100 years if required.

Setting up a Family Trust:

Charterhouse Inheritance Planning and their partner solicitors will prepare all relevant legal documents required to execute the process. It

is also normal practice to have a Will arranged at the same time in this process.

Consideration should be given as to who should be your nominated trustees in your Family Trust, and also your executors in your Will – it is good practice to have your nominated trustees and executors to be the same, albeit you cannot be an executor in your own Will.

Note: a Letter of Wishes is also completed, allowing you to nominate “reserve trustees”, should any of your originally nominated trustees lose capacity, pre-decease you, or become bankrupt.

Normally you would appoint your spouse or one (or more) of your children (or trusted relations/friends) as nominated executors in your Will, plus our nominated solicitors. You also have the option of nominating reserve (known as “whom-failing”) executors in your Will – these reserve executors can thereafter become executors should your nominated executor(s) lose capacity, pre-decease you, or become bankrupt.

During your Lifetime:

Once your Family Trust has been created, you can use it to ‘ring-fence’ your assets. Most people will protect their home and the bulk of their savings/investments, leaving capital in their bank or other savings accounts for ongoing living expenses. Tax-free income from savings protected within the Trust, usually in the form of a Capital Investment Bond, can be paid directly into your bank account to supplement income/ income from earnings or pensions. The tax-free income allowance is 5% annually of the original amount invested in the Bond.

Withdrawing funds from your Trust:

Just like a safety deposit box, your assets can be added and removed from your Trust during your lifetime. If you have a large expense that cannot be met out of normal income and savings (for example, a new car, holiday or house repairs) the appropriate sum can be transferred to your bank account from the Trust.

You are free to move home at any time. You can direct the Trustees to sell the property and to buy a new property of your choice. If the new

property you are acquiring is more expensive, the Trustees can only buy the new property if the additional capital required is paid into the Trust by you or sourced from the savings within your Trust (again as a Capital Investment Bond). If you are down-sizing and there is funds left from the sale/purchase proceeds, then you can arrange for another Bond to be purchased within the Trust

You have a guaranteed right of occupation in your property for the remainder of your life. The Trustees cannot evict you under any circumstances.

The Family Trust is equally applicable to married couples and to single people.

If you lose mental capacity:

If you lose mental capacity, the law states that you are no longer allowed to manage your own affairs. Assets held within your Trust will then be managed by your Trustees on your behalf. Your Trustees can effectively make decisions on your behalf, but all decisions must be for your benefit. They are able to add or remove assets or use the income from the Trust to help you and improve the quality of your life.

Assets held outside the Trust will fall under the control of the courts. ***Creating a Power of Attorney*** will enable the people you choose to manage the assets that you own outside of the Trust. It is good practice to nominate the same people as your attorneys that you have nominated as your executors in your Will.

Frequently asked questions

Q: *“If we set up a Trust, what happens when one of us dies?”*

A: The trust, and all the protection it gives, simply continues until the second person dies. The survivor continues to retain the benefits of the trust

Q: *“Can we add other assets to the trust later?”*

A: Yes, but care needs to be taken as to the timing of this – to ensure that any asset added later does not constitute a deliberate deprivation of capital. For example, some years later you become aware of the need for care and transfer an asset into your trust weeks before you enter care

Q: *“I have fallen out with one of my children - can I stop him from inheriting from me?”*

A: Your son has a legal right of claim on your estate, even if you have excluded him from your Will. However, the assets within your Family Trust bypasses this potential problem, as the trust only pays out to beneficiaries within the trust – giving you complete control of who gets what, and how much. However, be careful – any assets not in your Trust would fall vulnerable to his legal right of claim

Q: *“What assets can I put in my Family Trust?”*

A: Each person (known as the Settlor) can transfer up to £325,000 to the Trust. Therefore a couple setting up a Trust can transfer up to £650,000 to their Trust.

Assets that can go into your Trust are;

- 1: Properties - your main residence and rental properties
- 2: Capital Investment Bonds
- 3: Savings – this would require you to purchase Capital Investment Bond to be assigned to your Trust (a fairly simple process)
- 4: Whole of Life Insurance Policies (not subject to the £325,000 limit)