

Life-interest wills



What a life-interest will can do for you

Many clients wish to make provision in their wills for their spouses or partners and for their children. Usually, there are not enough assets to fund payments to the children and clients give all their property to their spouse and hope he/she will leave something for their children.

The dilemma particularly arises where the client has a spouse and children from a prior relationship.

Life-interest wills can resolve the issue and avoid the 'give all and hope for the best' approach because they allow clients' wills to give their partner the right to use their assets, such as, their share of their residence and to direct that, on the death of the partner, the client's share in the house goes to their own children.

Clients can also obtain a basic level of asset protection by adopting life-interest wills because assets subject to a life-interest do not legally belong to the person having the benefit of the interest (the surviving spouse in the example given in the preceding paragraph) and, therefore, cannot be used to pay rest-home fees for that person, for example, or taken from that person should they become bankrupt.

Life-interest wills are also useful to clients who would like their spouse to have the income from their funds but want to know that the capital will be there for the children when their spouse dies.

Accordingly, life-interest wills can give peace of mind and a measure of asset protection. They are not as complex to set up as family

trusts. Further, because a life-interest created by a will only comes into existence when the person making the will dies, less administration is required than with a family trust for which annual accounts and other formalities, such as, tax returns may be required from the day the trust is created.

We set out some further details on life-interest wills.

What is a life-interest will?

Wills can provide for a person to have the right during their lifetime to use the deceased's share in certain assets. Frequently, this right is given in respect of residences but it can also be given in respect of investments and other assets.

Such a right is called a "life-interest" because the beneficiary only receives the use of, or the income from, the specified assets during the beneficiary's lifetime. The life-interest usually determines on the beneficiary's death but the will can express that the interest is to cease if the beneficiary remarries or if another defined event occurs. Technically, the life-interest beneficiary is called the "life-tenant".

The life-interest beneficiary never obtains ownership of the assets subject to the life interest; the assets never form part of the beneficiary's estate and they cannot be used to pay rest home fees for the beneficiary or satisfy other liabilities of the beneficiary.

If a life-interest is created by will in a house, the will can allow the deceased's share in the house to be sold and the proceeds used to purchase another house, or invested with the income to be paid to the beneficiary.

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The trustees of the first estate could have the power to advance capital to the beneficiary if the trustees feel that the beneficiary requires additional funds to maintain a suitable standard of living.

Upon the death of the beneficiary, the assets subject to the life-interest would pass in accordance with the first deceased's will. The assets of the life-tenant would be transferred in accordance with that person's will. If a couple each have children from previous relationships, they could direct that their respective shares go to their respective children when both have died.

Thus, life-interest wills can protect specified assets of the first estate and suit clients who do not wish to set up long-term trusts.

Limitations

You should be aware of the limitations of life-interest wills. Assets are not protected by a life-interest will until the owner has died and the assets could be dissipated before then. Life-interest wills do nothing to protect the assets of the surviving spouse.

For example, a husband's assets might be totally used up on rest home charges so that, when he dies, there is nothing in his estate. All the assets of the surviving wife might then be used to fund her care so that nothing is left for the children when she dies.

Further, the purpose of a life-interest will could be defeated if the surviving spouse contests the will and succeeds in obtaining absolute ownership of the assets which were intended to be protected.

If these limitations concern you, we recommend that you consider setting up trusts that offer more constant protection and flexibility. Please contact us if you would like to find out more about trusts.

Joint and several ownership

You cannot create a life-interest in property that you own "jointly" in the legal sense of that word. If property is owned jointly, ownership passes automatically to the survivor, irrespective of the terms of the owners' wills. Life-interests can only be created in respect of a property where the property is owned "as tenants in common" whether equally or in specified shares. The tenancy in common form of ownership means that each owner has a distinct legal share that does not pass automatically to the survivor. Each share, instead, passes in accordance with the owner's will.

To allow a life-interest to be created in respect of a jointly-owned residence, a transfer is registered to give each owner a share in the property "as tenants in common". Usually the shares are equal but not always.

Ownership of some property cannot be recorded in tenants in common ownership. The solution is to divide the property into separately-held parcels. For example, if a couple jointly own a bank term deposit, they can split the investment into two deposits, one for each of them.

Conclusion

We hope these notes have explained to you the benefits of life-interest wills. A life-interest created by will is a very useful arrangement which can solve the dilemma of satisfying obligations to two classes of beneficiaries. They are a very cost-effective mechanism and they avoid the complexity of family trusts.

If you would like to discuss how life-interest wills can help you, we invite you to contact us for an appointment.

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