



Key Benefits

Avoid your property being used to pay for residential care

Avoid disinheriting children from a first marriage

“Will writing service excellent and efficient. Very informative and practical options discussed.”
K Kiani

Life Interest Trust

Protecting your property

While creating a Will it is a good time to consider how you can guarantee that your beneficiaries do benefit from your estate and try to minimise the risk of your share of the property being used to fund residential care or passing to your spouse's new spouse if they re-marry.

A Life Interest Trust is drafted into a Will to allow a beneficiary to be loaned either property or capital or both whilst they are living. When the trust is closed the assets pass as residue to the beneficiaries.

Most people who co-own their home with another person do so as Joint Owners. They both own the whole property. On the death of a Joint Owner, the home automatically becomes the sole property of the survivor who can do what they want with it. However, this can cause problems:

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- If the survivor then remarries, it is possible the whole of the house will pass to their new spouse on their death, thus disinheriting the children of the first marriage.
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- If the survivor goes into a care home, as the sole owner of the property, the Local Authority has powers to charge the cost of care against the value of the whole house, again disinheriting the children.
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What if I need to go into Residential care?

In recent years, it has become increasingly apparent that the State will only provide for those with little or no savings or assets. Everyone else will be expected to pay at least part, if not all, of his or her own costs. Currently, anyone with assets in excess of £23,250 (this includes the family home) would not be eligible for any state help with their residential care fees. If you have more than £14,250 but less than £23,250 you would only be entitled to partial assistance.

The net result is that anyone who owns their own home is unlikely to receive any assistance even though they do not have large amounts of cash assets.

Even if you don't have the cash readily available, the local authority can still place a charge against the family home, which allows them to recover the moneys owing when the property is eventually sold.

Average residential care fees start in the region of £1200 per week in this area of the country, so it is clear how quickly assets can be eroded. The local authority has often become the sole outright owner of the family home after the death of an elderly parent who had been living in a care home. But there is a solution.

What can be done to protect the home that you've worked so hard for?

The answer to both these problems is to change the way the home is owned from Joint Owners to Tenants in Common - a straightforward process that doesn't involve the mortgage company even if the property is mortgaged.

As Tenants in Common each owner owns one half of the property and, using a Will, can do whatever they wish with their share of the property on their death, including:

- leaving it to their (own) children so that if the surviving spouse remarries, they will only own their own half of the property and can only give their own share to their new spouse.
- leaving it to their (own) children so that if a surviving spouse needs care, the Local Authority can only charge the cost of care against the half of the house that they own, ensuring in either case that their children inherit at least half of the value of their home. In fact, recent case law indicates that the value of half a house is effectively Nil and, in these circumstances, the Local Authority may not be able to charge any of the cost of care against the value of the house.

NOTE: These arrangements only apply to couples who are drafting Wills. They are not effective for single people. It is therefore essential to plan early.

Please contact us if you would like to discuss further.

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