



WILLS JACOBSEN

LEGAL

PROPERTY PROTECTION TRUST WILLS

Most people know that making a Will is very important for you and your family. We regularly see couples who are concerned about preserving wealth for their children and grandchildren when they die. Unfortunately many couples aren't aware of a potential trap that can significantly reduce the amount their children and grandchildren could inherit.

For instance, if you are married with adult children and own a house worth £250,000 and have savings of £50,000 between you, you will most likely want to pass everything to the survivor of, and when the survivor dies, everything to your children. This is a typical arrangement for married couples with children.

So on the first death in accordance with the Will, the estate of the deceased passes entirely to the survivor who then has all the assets £300,000 in their name.

If the survivor needs care in the future they will have their finances assessed by the Local Authority and if they have more than £23,250 they will have to pay for their care home fees. The cost of the care home could be as much as £40,000 per year so if the survivor stays in the home for 5 years until death, the total cost amounts to £200,000, leaving only £100,000 to pass to the children on the survivors death.

For some couples this scenario is fine, but for many couples it won't be. There is a desire among many people to try and protect as much of their wealth as possible from being used for care home fees.

The good news for couples living in England and Wales is that, with the right advice, there is a way to protect at least half the value of the family home and keep it for the children. This is achieved by writing your Will in such a way that it puts half the family home into a type of Trust when the first spouse or civil partner dies. The terms of the Trust also mean that the surviving spouse or civil partner can continue to live in the property held within the Trust. These are called Property Protection Trust Wills.

By preparing a Property Trust Will in the right way, the value of half the home is ring-fenced by the Trust so that it isn't taken into account if the surviving spouse is financially assessed for residential care home fees. The reason is because half of it is owned by the Trust and the other half is owned by the surviving spouse or civil partner.

PROPERTY DECLARATIONS OF TRUST

A declaration of trust is an important document in which 'trustees' are appointed to hold property for 'beneficiaries'. It appoints people as trustees who are 'trusted' to act in an appropriate manner and always in the interests of the beneficiaries and is governed by The Trustee Act 2000.

A declaration of trust confirms the true ownership of a property in the proportions contributed by each party regardless of the title entries at the land registry. It can allow an owner not protected by being a registered owner of a property at the land registry, to actually be an owner and be protected as such. The declaration of trust can be noted at the land registry, alerting future purchasers that the registered owner is not alone in owning the property.

Lets look at some examples:

- Miss A is purchasing her first home with the benefit of a mortgage. Her parents are putting up some of the purchase price on the basis that they will share any 'profit' made on the property. The registered owner on the title deeds of the property will be Miss A but her parents can register their beneficial interest in a Declaration of Trust. By completing the same the beneficial interest of the parents is protected without them having to be named on the mortgage deed themselves. It states the percentage contribution made by the beneficiaries and the percentage of proceeds of sale due to them.
- Mr B and Mrs C are both contributing to buying a home together but Mrs C is still an owner of a different property with an existing mortgage. She cannot be party to another mortgage because of that. A declaration of trust is needed to state the beneficial interests and protect Mrs C's interest as an actual owner of the property, with Mr B as the legal owner and the sole mortgagee. The Declaration of Trust will state the percentage contribution made by the Mrs C, and the percentage of proceeds of sale due to Mrs C.
- Mr D and Mrs E are buying a property together, but are providing different contributions to the purchase price. They wish their contributions to be reflected in a legal document. Mr E is to own 60% and Mrs E is own 40%. Upon sale they will get a respective share of the net proceeds. A Declaration of Trust will record each person's contribution and the proportions of the property they own.

THINGS TO THINK ABOUT

You need to be absolutely certain of the decision that you are making to share ownership of a property as a Declaration of Trust changes the beneficial ownership. The purchase of a property is a long term commitment, longer than some marriages and a trust deed reflecting the true ownership must be just that: the true ownership.

Work out very carefully the proportions in which you will own the property, and don't forget to include the costs of the purchase in your calculations. If only one party is paying for the stamp duty, that should be taken into consideration when you work out the percentages. The proportions that you set out in the trust deed are the proportions that will be used to distribute the sale proceeds when the property is sold (or possibly the amounts that each party has to pay for the property to be sold if the property loses value).

The registered and true owner(s) must complete the declaration of trust together. If the declaration of trust is completed without all parties' knowledge and consent, then registration of the declaration of trust could be considered fraudulent