

# A Life Interest Trust

## The Advantages

We all know the importance of making a Will, but how many of us delay doing so because we are faced with so many conundrums. One of the most common problems is wishing to ensure that our hard earned money goes to the next generation, but our spouse is protected during their life time.

No single situation is the same and a Will by being bespoke, should provide a solution for most.

Here, we have highlighted some of the most common scenarios, but if you do not recognise your particular set of circumstances, we can show you how we can still help, if not by using a life interest trust, then another way.

### Case Studies

#### **Where only one spouse has been married before**

It is 2 years since Ronald died and Nancy has married an Italian, Silvio, who owns a media business. For Silvio this is his first marriage. Nancy and Silvio agree that the family home which is in Nancy's sole name on Pennsylvania Avenue should be left to her children on Nancy's death. If Nancy dies first she knows Silvio will need somewhere to live.

#### **Where both spouses have been married before**

Hillary and George are both widowed. They have found comfort in each other and now have married. They have sold both family homes and bought a house in Martha's Vineyard where they live with Hillary's daughter and George's six children. Both Hillary and George want to ensure that on each other's death a share of the assets go to their children so they benefit from Mum or Dad's original family home.

#### **Where the spouses have agreed that a remarriage will not disadvantage the children**

Jackie and John want to make sure that on their death, their own shares in their home in Cape Cod will go to the children and not to a second spouse or their family, if they were to remarry.

In all these cases, Nancy, Hillary, George, Jackie and John want to protect their family home and pass it to their children whilst not causing any hardship or difficulties for the new partner.

The answer to all these problems is what is known as a life interest trust in a Will.

## **How does it work?**

A life interest trust in a Will is a very flexible way of benefiting the family whilst providing protection for a spouse.

- **The Family Home**  
A life interest trust in a Will leaves the share of the house of the Testator (the person making the Will) to their children giving at the same time their spouse the right to live there for the rest of their life. The house is passed down the line to ensure it passes to the next generation, but the spouse can still benefit from it in the way they need to.
- **Money**  
A life interest trust in a Will leaves capital to the next generation, but the spouse receives the income during their life.

## **Case Studies Explained**

### **Where one spouse has been married before**

In our first example, Nancy has put a life interest trust in her Will leaving the home to her children and giving Silvio the right to live there for life. This not only protects the house for the children, but would be protection if Silvio goes bankrupt if his media business fails.

An added benefit is, if Silvio has to go into The Washington Care home, then there is no house which has to be sold to pay the fees as it has already passed down to the children.

If Silvio needed to move to a smaller house, this can be covered in the Trust. The Trust could also be worded to allow for Silvio to receive an income if that was what Nancy wished.

Whilst Silvio is living in the house, the children cannot sell it. Silvio does not have to pay rent, but he will have to pay all the usual outgoings including the utilities, insurance and council tax.

### **Where both spouses have been married before**

Hillary and George have each written a Will with a life interest trust. Provided Hillary and George have ensured that they own their home as tenants in common AND they include a clause in their Wills that they wish for their share in the home to pass to their children, then on death, their individual shares will pass to their children.

A joint tenancy is the usual way that a couple own their home. It means that on the first death the whole of the property passes to the surviving spouse outside of the Will. This is different from a tenancy in common when each spouse has a defined and separate share of the property (for example 50%). On death, this share passes in accordance with the wishes set out in a Will.

Hillary and George have changed the ownership from joint tenancy to tenancy in common and have agreed a 50% share each. This means on George's death, his 50% share can pass to whomever he wishes, which in this case would be his children. Hillary can still continue to live there for the rest of her life under the life interest trust.

As with Silvio, whilst Hillary is living in the house, the children cannot sell it. Hillary does not have to pay rent, but she will have to pay all the usual outgoings including the utilities, insurance and council tax.

When Hillary dies her 50% goes to her daughter, as she has also stipulated this in her Will.

Should Hillary marry for the third time, George's children's inheritance is protected from any risk of bankruptcy or disinheritance as his share of the house (50%) has already passed to his children.

If whilst Hillary and George are alive and Hillary has to go into care, with the current law on care fees\*, the local authority cannot take into account the house when assessing Hillary's means, as George still lives there.

If Hillary were to die and George was to go into care, then the local authority under the current law\*, could only attach to 50% of the property as half has already passed to Hillary's daughter under the terms of Hillary's Will.

### **Where the spouses have agreed that a remarriage will not disadvantage the children**

In our last example, Jackie and John have written a Will and within that have created a life interest trust and ensured that the property is held as tenants in common. In their Wills, they have each included a clause which ensures that their respective share in the home passes to their children. The benefits for them are the same as for Hillary and George, as are the restrictions on sale whilst either Jackie or John are living in the house.

Like Silvio and Hillary, neither will have to pay rent, but they will have to pay all the usual outgoings including the usual utilities, insurance and council tax.

If your situation differs from the examples given, a life interest trust is flexible and we would discuss with you how best to approach your situation to give protection to your spouse and to ensure an inheritance for the next generation.

### **Why Use Linder Myers**

We have a large team of dedicated lawyers specialising in the preparation of Wills and Life Interest Trusts.

A number of our lawyers are members of the Society of Trust and Estate Practitioners (STEP), which is a worldwide body representing practitioners specialising in the area of trusts and estates. [www.step.org](http://www.step.org).

We are committed to delivering the very best possible service at a competitive price. We work closely with clients to take the strain out of the legal process. Distance is not an issue as we offer a range of ways that you can appoint us including a postal service, email service, telephone service, Skype and face to face meetings.

Contact Linder Myers – place your trust in a specialist lawyer.

**\*correct as of September 2015**



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