

Life Interest Trusts: Second and subsequent marriages – how to protect property and assets for your children

For many people, protecting their children's inheritance is their top priority when planning for the future. You might share this wish – keen to make sure that your property and assets are passed on to your children intact, without the risk of it being transferred elsewhere. If you are in a marriage or civil partnership, there is always the potential – where one partner dies first – that the surviving partner may begin a new relationship – perhaps entering into another marriage or civil partnership.

This can complicate their inheritance intentions, perhaps leading the surviving partner to make provision for their partner and/or any stepchildren. It is also important to consider this if you already have children from a previous marriage, and you want to make sure that they are protected.

Inheritance risks caused by second or subsequent marriages

It is common for couples to arrange their Wills so that, when one of them dies, everything passes to the surviving partner, and subsequently passes to their children after the surviving partner also dies.

However, there are risks with this arrangement. Even if you are both agreed, there is nothing legally preventing the surviving from changing their Will at any point in the future. You might both believe it is extremely unlikely, but no one really knows what the future may hold.

Example 1

Alexandra and Simon are married and have a child together, Petra. They both wish to provide for Petra after they are gone so they make Wills in similar terms (as described above) for their entire estates. Alexandra dies first and all of her assets go to Simon.

Several years later, Simon falls in love with a co-worker, Tiffany. They decide to get married. Petra is angry at her father for moving on so quickly and, after a blazing row, they fall out with each other. Simon decides to cut her out of his Will and changes it so that his estate will pass to Tiffany instead.

Simon dies unexpectedly a few months later. His estate, which includes the whole of Alexandra's estate, passes to Tiffany. Petra receives nothing from either of her parents.

You can make legal preparations to prevent this kind of situation from happening. The most effective is to make a life interest trust in your Will.

Making a life interest trust

A life interest trust in your Will can achieve two important objectives:

1. It will safeguard the assets put into the trust – preventing any risk of your surviving partner giving these assets to anyone else, either during their lifetime, or in their Will.
2. It can allow your partner to continue to use and enjoy the assets in the trust for the rest of his or her life.

Life interest trusts can be used in a number of different situations, but their unique features make them ideal for couples with children, whose main asset is property, to provide for each other and their children.

Before creating the trust

Life interest trusts work well as a way to pass on large, jointly owned assets (such as property) securely. However, the manner in which you hold such jointly owned property is important. You must be able to legally pass on your share of the property in your Will for you to be able to put it into a life interest trust. This means you must hold the joint property as 'tenants in common'.

If you do not hold the property in this way, changing to tenants in common is a simple procedure which Roche Legal can help you with.

To find out more about joint property, and owning it as tenants in common, please read our [help guide](#) on 'Jointly Owned Property'.

How the trust works

Life interest trusts allow you to give someone rights during their lifetime over the trust assets, whilst also specifying who will ultimately receive the assets when that person dies. The person receiving the life interest (known as the 'life tenant') may be granted rights to use the assets or receive income from them, but will have no rights to dispose of them in their lifetime or through their Will.

Example 2

Suppose that, in Example 1, Alexandra and Simon had made Wills in similar terms which included a life interest trust. Whichever spouse lives the longest will be given a life interest and the ultimate beneficiary of this trust will be their daughter, Petra. The valuable family home is to be placed into the trust, which Alexandra and Simon own in equal shares as tenants in common.

When Alexandra dies, her Will sets up the life interest trust and her 50% share of the house is placed into it. Simon is given a life interest over Alexandra's share and still holds his own share. His life interest allows him to live in the property during his lifetime.

Simon then meets Tiffany and he falls out with Petra. If Simon still decides to change his Will and leave everything to Tiffany, he can only dispose of his own 50% share in the house. Petra is entitled to receive Alexandra's share under the life interest trust and, as the life tenant of that trust there is nothing he can do to change this. Petra's inheritance from her mother is protected by the trust.

By the same token, Simon's right to live in the house for his lifetime is protected by the trust for his lifetime and Petra will not actually receive her share of the house until Simon's death.

Flexibility

Life interest trusts can also be flexible. A life tenant may wish to sell a house which is within the trust or they may need to downsize, for example. This is possible as long as the ultimate beneficiary's interest is preserved.

Any capital subject to the trust, and not used to buy a smaller property, would usually be invested by the trustees to produce an income for the life tenant, whilst the capital value would usually be protected for the ultimate beneficiary.

Example 3

Following on from Example 2, Simon sells the house for £500,000 after Alexandra's death. He decides to move in with Tiffany so does not buy a new house. Petra is still entitled to 50% of the capital value (£250,000) through the life interest trust.

However, as Simon is still the life tenant over that share, he is entitled to receive any income it may generate for his lifetime.

This is in addition to his own 50% share.

What if my partner remarries or cohabits after my death?

When you create a life interest trust, you can use the terms of the trust to tailor it to your intentions. You could specify situations in which the life tenant would lose their rights to use or enjoy the trust property. For instance, you might specify that the life tenant will lose their right to live in a house under the trust if they remarry, enter into a new civil partnership, or co-habit with a new partner.

What about other assets, apart from the house?

Life interest trusts can also be put into place for other assets, such as accounts and investments, not just property. Where accounts and investments are subject to a life interest trust, the income produced from the assets would usually be available for use by the life tenant, whilst the capital would usually be earmarked for the ultimate beneficiary.

Another common use of a life interest trust is to prevent valuable assets from being included in means assessments for residential care fees. Our [help guide](#): 'Life Interest Trusts: Planning for Care Home Fees' contains more information.

You should be aware that setting up a life interest trust can have a number of tax consequences. To find out more about this and about trusts in general, please read our [help guide](#): 'Trusts: A Detailed Guide'.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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