

## Life Interest Trusts in Wills

A life interest trust is a type of trust that can be written into a Will. It is also possible for someone to set up a life interest trust during their lifetime, though these are called *inter vivos* trusts and are not covered in this help guide.

With a life interest trust in a Will, it's possible to bequeath someone the rights over an asset during their lifetime in a way that still allows you to dictate who should ultimately inherit that asset when the first beneficiary? dies.

Life interest trusts are commonly used for individuals who wish to leave their home – or their share of their home – to their children in their Will, but want to ensure their spouse or partner would have the right to remain living in the home for as long as they need. This is typically for the rest of their life, but the right could come to an end sooner if specified in the trust, for example if the surviving spouse was to remarry or begin cohabitating with a new partner.

In these situations, the surviving spouse or partner would be considered the 'life tenant' and the children who would ultimately inherit the house would be known as the 'reversionary beneficiaries'. In other words, the house (or a share of it) *reverts* to the children on the death of the surviving spouse or partner.

Though life interest trusts are often associated with property, they can also be used for other types of assets such as bank accounts and investments or even vehicles, artwork or jewellery.

In the case of bank accounts and investments, the life tenant would usually be granted the rights to any interest or dividends that these assets accrued during their lifetime, but would need to protect the capital itself to be passed onto the reversionary beneficiary.

Regardless of whether the asset that was subject to a life interest trust was a house, a bank account or a piece of art, though the life tenant would have the right to enjoy it however they saw fit during their lifetime, they would not be able to:

1. Dispose of, sell or give away the asset.
2. Leave the asset to a person of their choosing in their own Will.

Life interest trusts can be useful in a range of scenarios, but they're most commonly used by individuals who wish to ring-fence an inheritance for their children.

Often, this is due to concerns around second or subsequent marriages, or the possibility of assets being used up in the course of paying for care later in life.

## Life interest trusts and second or subsequent marriages

Second or subsequent marriages can be considered inheritance risks as they might mean that an individual's assets are left to a new spouse on their death rather than to any children from a previous relationship.

### *Why might this happen?*

When a couple writes a Will together, they often write wills that mirror each other. Generally, this sort of Will is written in a way that would mean that when the first partner died, all their assets would pass to the surviving partner. The wills would then dictate that when the second partner died, all their assets (which would include any left by the first partner) would pass to the couple's children.

However, there are risks with this arrangement. Though couples can agree between themselves to honour this agreement, there are no legal protections in place for if the surviving partner changes their mind after the first death. This can be a particular delicate situation in the case of blended families.

Though you might feel it's unlikely that either you or your partner would have a change of heart about something so important, no one really knows what the future might hold. If the surviving partner was to enter a new relationship, it's possible that their priorities might change and they might decide to make a new Will that would not have reflected the wishes of their previous partner.

### **Example**

Alexandra and Simon are married and have a child together, Petra. They both wish to provide for Petra once they're gone, so they make wills to reflect this. Alexandra and Simon's wills both leave all their assets first to each other and then, on the death of the second spouse, to Petra. As such, when Alexandra dies first, all her assets pass to Simon.

Several years later, Simon meets Tiffany and they decide to get married. Petra is not supportive of the marriage and, after a blazing row, they fall out. Out of anger, Simon changes his Will to cut Petra out of it. When he dies unexpectedly a few months later, Tiffany inherits all that remains of both Simon and Alexandra's estate, and Petra receives nothing.

## *How can a life interest trust help in this situation?*

A life interest trust can be a very effective way to make sure that situations like the above example do not happen.

Adding this kind of trust to your Will achieves two important objectives:

1. It will safeguard the assets that are put into the trust and will prevent the surviving partner from being able to give those assets to anyone else, either during their lifetime or in their own Will.
2. It will allow the surviving partner to continue to use and enjoy the assets that are held in trust for the rest of their life.

### **Example**

When they write their wills, Alexandra and Simon decide to take an extra step to ensure Petra's interests are protected. They decide to each leave their half of the family home directly to Petra in their Will, with a life interest trust to ensure that the surviving spouse has the right to remain in the house for the rest of their life.

When Alexandra dies, Petra inherits her mother's half of the house. As Simon has been named as the life tenant, he retains the right to remain living there.

When Simon and Petra fall out over his marriage to Tiffany a few years later, Simon is still able to change his own Will. However, he can only stop Petra from receiving his own assets: he cannot change the provisions put in place by Alexandra's Will. When Simon dies, though he is able to leave his own half of the house to Tiffany, Petra will automatically inherit Alexandra's half. This means that in this scenario Petra is not left with nothing.

## Life interest trusts and care fees

As you get older, you might start to think about what would happen if you were to need care later in life. Whether this would involve home visits from paid carers or moving into a care home, it's likely that you would need to make a significant contribution towards the cost.

### *What might you have to pay?*

If care becomes a necessity, you may be eligible to receive some help from the government to cover the fees. A means test is used to determine the level of financial support you would be entitled to. This will assess any income you have as well as any

capital (which would be made up of savings, investments and the value of any property you own).

In England, the thresholds for support are as follows:

- **Over £23,250 in capital** – You will not receive any financial support with care fees.
- **Between £14,250 and £23,250 in capital** – You will receive partial support with care fees.
- **Less than £14,250 in capital** – You will receive full support with care fees.

There are some exceptions to this, such as if you have a health condition that requires day to day medical care. To find out more about this, please read our ebook, *Caring for An Elderly Relative*.

### *How does property come into this?*

If you own your home and need to move into a care facility, the value of that home may be taken into account as part of the means test. However, the value of your property will usually not be considered if it will still be occupied by your partner, former partner or certain other family members.

Your home would also not be taken into account for the means test if you needed a paid carer to support you at home.

If your home was taken into account as part of a financial assessment, you may be required to sell the property in order to use the proceeds to cover residential care fees.

This can represent a risk for couples who make mirror wills leaving all their assets directly to the other partner. If the surviving partner was to go on to require residential care, they would be the sole owner of the house and might therefore have to put the value of the whole house towards care costs, which could leave very little left for their children to inherit.

### *How could a life interest trust help in this situation?*

A life interest trust can help in these situations as it could ring-fence a share of the value of a property for the ultimate beneficiaries and prevent it from being used to cover care costs.

Life interest trusts could also help to safeguard other assets such as investments or savings accounts. If an elderly person who required care was the life tenant of a savings

account or investment, only the interest or dividends from these would be able to go towards to cost of their care.

## **Example**

In their wills, Alexandra and Simon each leave their 50% share of the family home in a life interest trust with Petra as the ultimate beneficiary.

Simon dies first and Alexandra remains living in the house. However, she now only owns 50% of the property, with life tenant rights over the other 50%. After some years, Alexandra's health worsens and it's decided that she needs to move into a care home.

Alexandra's care assessment includes a means test and it is determined that she will be responsible for covering the cost of her own care. However, only the 50% of the family home that she owns is subject to this assessment, not the 50% that is held in trust for Petra.

When the house is sold for £300,000, £150,000 of this goes towards Alexandra's care home fees. However, the other £150,000 cannot be used in this way as it has to be held in trust for Petra to inherit once Alexandra dies. In the meantime, Alexandra will receive the income from Petra's £150,000 which would usually be in the form of interest or dividends. These could then be invested with financial advice to achieve a return for Alexandra to live on, whilst still safeguarding the capital for Petra to receive on Alexandra's death.

Note: in this example Alexandra and Simon own their home 50/50 as tenants in common, but they could still have made a life interest trust if they owned the home in unequal shares.

## How to set up a life interest trust

When you work with a solicitor to make a Will, they will be able to advise you on whether a life interest trust is right for you. They will also be able to inform you of anything you need to do in order to include one in your Will.

You will usually need to appoint at least two trustees in your Will to manage the trust and ensure the capital and/or property is transferred to the ultimate beneficiaries when the time comes. It is possible to name the life tenant and ultimate beneficiaries as trustees, but in some cases, it might be appropriate to appoint an independent trustee or even a professional trustee.

If you plan to leave your share of a property in a life interest trust, you will need to ensure that you and your partner own the property as ‘tenants in common’ rather than ‘joint tenants’. This is because if the property is owned as joint tenants, it will pass in its entirety to the surviving joint owner automatically, regardless of what their wills say. You can avoid this by working with a solicitor to “sever the tenancy”, or switch from joint ownership to tenants in common. This will free up the respective shares of the property so they can be bequeathed in a Will.

To find out more about the different types of joint property ownership and the impact they might have on your Will, please read our [Jointly Owned Property](#) help guide.

You should also be aware that setting up a life interest trust can have a number of tax consequences and in some cases will not work for care home fee planning purposes. To find out more about this and about trusts in general, please read our help guide [Trusts, a Detailed Guide](#).

Though there are generally no capital gains tax consequences on the death of a life tenant, this doesn’t wipe out any inheritance tax that may be payable. Any inheritance tax will be calculated in the usual way, with the whole of the value of the property attributed to the surviving spouse’s estate. If there is IHT to pay, the amount would be pro-rated between the estate of the surviving spouse and the value of the life interest.

## How flexible are life interest trusts?

When you include a life interest trust in your Will, you can add your own terms to the trust in order to make your intentions clear.

For instance, you may wish to specify any rules for how the asset left in trust must be managed or whether there are any situations that would trigger the life tenant to lose their rights.

This could include things like:

- Whether the life tenant would lose their right to the asset if they remarried or entered a new civil partnership.
- Whether the asset would pass to the ultimate beneficiary if the life tenant had to move into a care home.
- Whether the property or other asset could be sold during the life tenant’s lifetime.
- Whether the ultimate beneficiaries would be able to release funds from any capital held in trust for the life tenant to use.

However, though there are ways that you can build flexibility into a life interest trust, if you are the life tenant, by definition there is usually not much flexibility at all.

## *What if life tenants want/have to sell the property?*

Leaving a share of a property in a life interest trust would usually still allow the life tenant to sell the property (perhaps in order to downsize or relocate). However, the capital from the share held in the life interest trust would need to be preserved for the reversionary beneficiaries.

Any income earned from the share of the property in this arrangement (if, for example, any surplus capital from downsizing was invested, or if the property was rented out), would be payable to the life tenant as an additional source of income.

### **Example**

If Simon decided to sell the family home after his marriage to Tiffany, Petra would be entitled to a 50% share of the capital value. This would mean that if the house was sold for £300,000, Simon would have to hold £150,000 of this in trust for Petra. Though Simon would be able to benefit from any interest or dividends earned on this sum in the meantime, on his death the £150,000 would pass to Petra, no matter what Simon had written in his own Will.

## 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 factsheet, 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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