



ASSET PROTECTION TRUST (including some protection against Nursing Home fees)

A married couple will usually want everything to pass to the surviving spouse on the first death and to the children on the second death.

The introduction of the Transferable Nil Rate Band in October 2007 helped to reduce the Inheritance Tax bill on the second spouse's estate by giving the second spouse's Executor the right to claim the first spouse's unused Nil Rate Band. This has created a significant tax saving for those without tax planning Wills.

However it is not only Inheritance Tax that will reduce the children's inheritance – it is now the possibility of Care Home fees which in some cases take the whole estate leaving the children with virtually nothing.

THE SOLUTION

Life Interest Trust: On the death of the first spouse, the surviving spouse receives a life interest in the first spouse's assets (e.g. half of the matrimonial home and savings). On the death of the second spouse, the first spouse's assets pass to the residuary beneficiaries (usually the children).

NRB Discretionary Trust: On the death of the first spouse the amount of the Nil Rate Band (currently £325,000) is put into a Trust for the benefit of the second spouse and a group of beneficiaries (usually the children and future grandchildren).

This means that for both Trusts the money, or the interest in the family home which is in the Trust, is ring-fenced. So:

1. It cannot be used for Nursing Home or Care Home fees (unless the second spouse and Trustee agree);
2. It cannot be given away by the second spouse even if he/she remarries;
3. It cannot be claimed by creditors;
4. It is protected from financial mismanagement by a vulnerable second spouse.

It is however available for the second spouse's needs during his/her life.

For married couples who are concerned to protect assets from being taken into account for means-testing, then an Asset Protection Trust provides useful protection by ensuring that the money or property in the Trust cannot be used for Nursing/Care Home fees and is protected from other risks, as described above, so that it will be passed on to the children on the death of the second spouse.

Please note that if you use a Nil Rate Band Discretionary Trust, the Transferable Nil Rate Band is not available on the second death as the Nil Rate Band is within the Trust and protected from Inheritance Tax. If you use a Life Interest Trust, the Transferable Nil Rate Band is available on the second death.

WHAT IS THE COST?

The legal costs involved in dealing with Asset Protection Trust Wills depend on the time spent and the amount of work involved. However, as a guide, we set out below the likely cost:

Preparing Husband and Wife Wills containing Trust (including interview with clients)	£650.00
Severing joint ownership of house (includes notice of severance, restriction at Land Registry)	£100.00
Letter of Wishes	£100.00
VAT @ 15%	£127.50
Total	£977.50

If you would like more information on Asset Protection Trusts please contact us and we will be glad to explain the process and how it will apply to your situation.

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