

Flexible Life Interest Trust – How it works

1) It is possible to incorporate into each of a pair of mirror Wills a 'flexible life interest', or 'revocable life interest' trust. This arrangement leaves a life interest in residue to each other and can be used to ensure that this portion of the estate is protected against a future spouse or partner, or against creditors. It can be ideally suited to relationships where each partner wishes to **guarantee** their respective estate eventually passes to their children. During the lifetime of the surviving spouse or partner the intention would normally be for the surviving spouse (or partner) to benefit exclusively.

2) The appointment of trustees needs to be considered carefully, as they will collectively make decisions as to whom, when and how much is paid from the trust fund to the beneficiaries or loaned to the beneficiaries. The surviving spouse (or partner) could be a Trustee and therefore involved in this decision-making process.

3) The value of the Trust Fund would form part of the estate of the second spouse (or partner) for IHT purposes. However, provided the Trust's value, together with the survivor's estate, is below twice the IHT nil-rate band, it would not be subject to IHT on the death of the second spouse (or partner).

4) The Trust can include a share of any property owned by the first spouse (or partner) to die (subject to it being owned as tenants in common).

5) Your Trustees have very flexible powers to deal with the assets in the Trust. For instance, they could transfer assets to the survivor of you and take security in the form of a charge or a loan note (IOU). Loans could also be made to any other beneficiary, but this can be restricted to those authorised by the surviving spouse.

6) Assets that are held by a couple jointly will usually pass automatically to the surviving joint owner and not through the Will of the first to die. Thus, if a couple wish to take planning steps through their Wills, it is necessary to ensure that each partner has assets in his or her sole name, or that any joint property is held by the partners as "tenants in common". Assets held as "tenants in common" will still be in the joint names of the owners, but the share of the deceased will not pass automatically to the surviving joint owner. Instead, it will devolve in accordance with the provisions of any Will, and therefore may be used as a planning vehicle via the Trust Fund.

7) Where a property is owned as Tenants in Common, or when a Will creates any form of trust, Probate will almost certainly be required to either deal with the share of the property of the deceased or to set up the trust under the terms of the Will. This will involve legal and administrative fees if professional services are utilised at that time.

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