

THE LIFETIME ASSET TRUST - FREQUENTLY ASKED QUESTIONS

1 – WHAT IS THE LIFETIME ASSET TRUST ?

The Lifetime Asset Trust is a *Family Trust*. It might help to think of a Trust as a safety deposit box for you to keep your assets in. – You can pass your assets to a Family Trust established in your name and for your benefit whilst you are living...but why?

Placing your assets into a Family Trust should ensure that they pass to the people you want them to after your death, according to the terms of the Trust, or under the terms of your Will. The inheritance due to any unreliable beneficiary can be protected by the Trust and be passed to them at a more appropriate time.

If you originally planned to leave everything to your surviving spouse or partner, but have children from a previous relationship or marriage that you would like to ultimately benefit, then the Trust can be used to protect their intended inheritance.

The value of the Trust will NOT be eroded by the cost of administering your estate (probate costs) or by the cost of residential care in later life, if needed.

When the Trust ends your Trustees will pass the assets to your beneficiaries without having to follow any complicated processes or procedures, otherwise known as a Grant of Probate.

2 – BUT MY FAMILY WILL DEAL WITH THINGS AFTER MY DEATH

The procedures that your family have to follow when you die are often not as straightforward as you might expect. If your Will contains a Will Trust for example, this needs to be managed too. The cost incurred by your executors in gaining specialist help from a solicitor or bank could run into tens of thousands of pounds. Banks typically charge between 3% and 5% of the whole value of the estate.

Even if the family decide to take on the job themselves the process involved in applying for the Grant of Probate can be a very lengthy, time consuming and frustrating job. Your family may not have access to any part of your estate for up to a year, or even longer in some cases.

3 – THE COST OF CARE

If you own assets above £23,000 (2010/11) and need residential care in later life you are expected to pay for ALL the costs and may have to sell assets such as your home in certain circumstances. However, if you have already placed your assets in to a Family Trust it is highly unlikely that they can be used toward these costs.

4 – BUT MY FAMILY WILL LOOK AFTER ME

Hopefully you will never need to go into residential care but unfortunately 1 in 3 women and 1 in 4 men over the age of 65 do go into residential care so it can never be ruled out.

We are all living longer, and so the chances that we might need residential care later in life are increasing. Whilst family often start out with the best of intentions in wishing to take care of you, in reality it could be quite a difficult task and may not always be a realistic option. Moving into residential care often happens after suffering a fall at home or as a result of other previous health problems; the decision is sometimes taken out of your control.

5 – IS IT WORTH IT?

Placing assets into a Family Trust reduces any costs in relation to administering your estate, and potentially saves your estate being eroded by around £26,000 to £50,000 a year (the average cost of residential care in England and Wales). Doing nothing will mean extra costs and additional work for your family, and the loss of further assets before your death if you need long term residential care.

6 – WHO SHOULD BE THE TRUSTEES OF MY FAMILY TRUST?

The professional trustees we use to draw up the Trust Deed are familiar with acting as Trustees. Most of our clients prefer to appoint at least one of these professionals as their Trustees in addition to a delegated family member(s). This ensures independence; it also means that experts are at hand if needed. A Trust should have a minimum of two Trustees; you may have no more than four.

You control the Trustees - you can appoint new Trustees and remove existing ones, at any time, if you wish to do so.

7 – CAN I TRUST PROFESSIONAL TRUSTEES?

Professional Trustees are professional people and they are NOT beneficiaries of the Trust. They cannot benefit from the Trust in any way and like all professional Trustees they are bound by an Act of Parliament (the Trustee Act). They also have Professional Indemnity Insurance cover. They are bound by the terms of the Trust, a copy of which you receive before signing.

8 – WHAT ABOUT ONGOING FEES?

There aren't any! – with this scheme you pay the costs at the beginning and you have nothing further to pay unless you go into residential care and there is a dispute with the Council, which is very rare.

9 – CAN I CHANGE MY MIND?

Yes – since YOU control the Trust you can close the Trust and transfer the assets back into your name at any time.

10 – WHAT HAPPENS IF I/ONE OF US DIES?

Nothing – the Trust, and the protection it gives, simply continues as before until the second person dies. The survivor continues to retain control of the Trust.

11 – WHAT HAPPENS IF ONE OF THE TRUSTEES DIES?

A new Trustee is simply appointed to act in their place – this would of course be someone of your choosing.

12 – DO I STILL NEED TO MAKE A WILL AND A LASTING POWER OF ATTORNEY?

Anything you put into the Trust will be distributed in accordance with your expressed wishes and normally in accordance with your Will. The Will also distributes anything you own when you die that you haven't put into Trust.

The Lasting Power of Attorney document still enables your appointed people (Attorneys) to manage what you didn't put into the Trust whilst you are alive but are unable to manage yourself.

13 – WHO CAN SET UP A FAMILY TRUST?

Any person who fully understands the scope and nature of their planning and who is mentally capable of making such decisions.

14 – WHAT TYPE OF ASSETS CAN BE PLACED WITHIN THE TRUST?

Commonly clients put their house (or their share of it if it is owned jointly) and most savings/investments into the Trust. This is because capital of £13,500 or under is disregarded for means testing in relation to Local Authority financial assessments (2007-2008). We usually recommend that any savings or other investments over that figure are placed within the Trust.

Some assets, however, may be disregarded and can be left outside of the Trust. This applies also to all of your goods and chattels.

15 – ARE THERE ANY ASSETS WHICH CAUSE A PROBLEM IF THEY ARE PLACED WITHIN THE TRUST?

Any assets that might create an immediate charge to Capital Gains Tax. This includes any property that is not your principle private residence, but this merely means that specialist and individual care is needed when considering your options (which is exactly what we provide). It does not mean that nothing can be done.

16 – CAN OTHER ASSETS BE ADDED LATER?

Yes – although care needs to be taken to ensure if any asset is added later it does not constitute a deliberate deprivation of capital.

17 – IS THERE ANY LIMIT ON THE VALUE OF ASSETS PLACED WITHIN A FAMILY TRUST?

Technically there is no limit to what can pass into the Trust. However, in practice no more than the amount that can be given away free of Inheritance Tax should be put in. Any amount passed into the Trust beyond this figure would be subject to an immediate IHT charge of 20% of the amount over the limit/Nil Rate Band - £325,000 2010/11.

Should the value of Trust assets rise during the ten-year period, above the (rising) IHT threshold, the amount in excess will be taxable. For this reason we recommend that the Trust assets are re-valued prior to the Trust's tenth anniversary and, if necessary, adjustments made to mitigate the tax liability.

18 – WHEN IS THE BEST TIME TO SET UP A FAMILY TRUST?

As soon as possible! Local Authorities can look back to see why a Family Trust was set up and in what circumstances. Clearly if the Trust was set up at a time when the client was in good health, living independently and had no immediate prospect, or intention, of entering long term care it is highly unlikely that any questions would be asked.

However, Local Authorities can review all relevant medical and financial records during any investigation.

19 – CAN A FAMILY TRUST BE SET UP AFTER A CLIENT ENTERS CARE?

Yes it can. This will mean that your family does not have to worry about applying for a Grant of Probate after your death and the cost that this is likely to entail. Your assets can be transferred simply and quickly. The assets passed to Trust will, however, be assessed by the Local Authority and you would be required to continue to fund your own care.

20 – WHO WOULD BE THE BENEFICIARIES OF THE TRUST?

Just as you choose who benefits from your Will, you also decide who should benefit from the Trust. Quite often these are the same people. We will need to record all the relevant names and addresses.

21. HOW LONG DOES THE TRUST LAST AND IN WHAT CIRCUMSTANCES DOES IT END?

Technically, the Trust lasts for 125 years (this is set by Act of Parliament) but it will usually be closed down by the Trustees on the death of the Settlor or the Settlor's spouse.

However, there may be circumstances where it is desirable to continue to run the Trust for longer. This may be the case, for example, if one of the beneficiaries is disabled, or going through a divorce or a bankruptcy. A protected, managed fund is advantageous in these types of cases, which is the primary reason for considering a Trust in the first place.

22 – WHAT IF I WISH TO SELL MY PRESENT HOME & PURCHASE ANOTHER?

If you wish to move after placing the house in to a Family Trust you can do so. The paperwork would be signed by the Trustees but there are no restrictions on you. Any surplus cash (from the equity) is still protected by the Trust and will simply be added to any other savings and invested by the Trustees.

23 – WHAT IF SOME OF THE SAVINGS WITHIN THE TRUST ARE NEEDED BY THE SETTLOR?

The Trustees will transfer funds from the Trust back into your name, if required.

24 – IS THE TRUST GUARANTEED TO WORK FOR CARE HOME FEES?

Yes, as the law stands, if you can satisfy the two qualifying rules at the time you set up the Trust then there should be no problem. However, we cannot guarantee there will not be any future changes in laws that might defeat the efficacy of the Trust.

You are always assured of all the other benefits of setting up the Trust and could save ten times the cost of the Trust in Probate fees and other costs alone depending upon the size and complexity of your estate.

25 – IS THE PLAN USEFUL FOR INHERITANCE TAX (IHT) PLANNING?

No – This type of Trust is not designed for Inheritance Tax planning. If you have an IHT problem we will ensure that you receive specific advice on that. Please also note that the Trust will be registered with HMRC and that if, at the end of ten years, the value of your Trust is above the then exempt amount for IHT (£325,000 for 2010/11), a small amount of IHT may be payable on the excess. This can be avoided by paying out of the Trust Fund prior to the tenth anniversary. It is seldom a problem.

26 – IF I HAVE ANY QUESTIONS WHO SHOULD I CONTACT?

Your questions can be directed to;

Affinity Wills Ltd
Affinity House
90c Broomfield Road
Chelmsford
CM1 1SS
Telephone: 0800 731 3071
info@affinitywills.co.uk

27 – GLOSSARY OF TERMS

We try to avoid using too much legal jargon but unfortunately some is unavoidable. The following explanations should help.

Trust – A Trust is a like a protective box that you place assets in. You don't then technically own the assets as they are held by the Trust for the benefit of the people named in the Trust.

Settlor - This is the person who gives assets to the Trust (i.e. you). The Settlor has control over the Trustees and therefore, in practice, over the Trust itself.

Trustees – These are the people that the Settlor appoints to manage the Trust and to follow the rules of the Trust.

Trust Deed/Trust document – this is, in effect, the rulebook relating to the Trust. It will be signed by the Settlor and then the Trustees will be duty bound to follow its instructions. It will ensure the right of the Settlor to continue to live in any property passed into the Trust and that any assets are passed to the relevant people when the Trust ends.

Executors – These are the people that you appoint in your Will to wind up your estate. Their job is made a lot easier if you have already passed your assets to the Trust as they have less to distribute.

Probate (Grant of Probate) – When you die owning assets of significant value (usually sums over around £5,000 to £15,000) your executors (see above) have to gain the court's authority before they can distribute them. This comes in form of a Grant of Probate.

Lasting Power of Attorney – This is a separate legal document allowing you to appoint people, called Attorneys, to manage your financial affairs should you become unable to do this yourself. This will only be relevant to assets NOT passed by you to the Family Trust since those assets will be handled by the Trustees. Lasting Powers of Attorney replaced *Enduring Powers of Attorney* in October 2007.