

Family Protection Trust (FPT)

What is a Family Protection Trust (FPT)? Simply put, it allows you to put assets (usually property & savings) into a Trust during your lifetime which clients do for a variety of reasons – see below. Technically it is a Lifetime Discretionary Trust. The client who sets up the trust is called the Settlor. The client is usually one of the trustees and it is normal to appoint 2 professional trustees to act alongside the client. You keep your capital gains tax exemption so there's no tax to pay for when you die. Your family has no executry procedure to pay for when you die.

How does it work? You set up the Trust and you put your house and most of your other assets into it. You should regard the Trust as a safety deposit box. You can access your capital at any time provided the majority of the trustees agree. You can access an income from the Trust. You can continue to control the assets. You have no administration to worry about as the technical trustees will deal with that on your behalf.

You can even change your mind and take the assets back out of the Trust provided the majority of trustees agree. Remember if you have your assets in a Trust then they should be protected but assets outwith the Trust remain vulnerable.

Why Clients take out a Family Protection Trust:

Executry Costs

Problem: Executry costs can be much higher than people expect. This is compounded when the executors appointed do not have the necessary expertise or dedicated staff which results in significant time delays and associated costs. The Law Society state that executry fees a solicitor should charge is 3% of the estate value and with VAT and outlays added the fees for an estate of £100k (on this basis) would be circa £3,500. For a couple there will be 2 lots of executry fees to be paid with the second one generally being substantially more than the first.

Solution: With a FPT there should be no executry procedure to be carried out on either death.

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Sideways Disinheritance

Problem: Say a husband dies and leaves everything to his wife. The wife remarries and dies before her second husband. Her estate transfers to the second husband. He means to make a Will to put things right but does not get round to it. He dies and the whole estate is inherited by his children only and the children of the original couple are disinherited.

Solution: With a FPT this is avoided as your assets are kept in Trust for your children.

Children' Legal Rights

Problem: No matter what a Will says children can claim one third of the parents' moveable estate on the first death and one half of the parents' moveable estate on the second death. It is quite common for a client to wish to avoid this.

Solution: With the assets in a FPT the assets technically do not belong to the parent so the children's legal rights claim for the assets held in the Trust are reduced to nil.

Children Inheriting at the Wrong Time

Problem: Unfortunately there are many clients who have children with problems whether they be drug, alcohol, bankruptcy or gambling or indeed children with shaky marriages. When the parent dies in these circumstances it is often the wrong time for the children to inherit. Also your children's circumstances may be fine when you make a Will but things can change.

Solution: With a FPT the assets can remain in the Trust for the benefit of the children and are made available to the children when the parents would have wanted e.g. the son with a shaky marriage gets divorced, bankruptcy period has elapsed etc.

Children's IHT

Problem: Surprisingly often when the parent's estate is added to the children's estate the children are then faced with an IHT liability especially when children inherit from both sides of the family. This in turn will have an adverse effect on your grandchildren's inheritance as their parent will have a taxable estate.

Solution: With a FPT this will allow you to do what is called Generational Estate Planning. The parents can each protect their assets of up to £325k in the trust. When the parent dies the assets can remain there for the remaining balance of the 125 year period. The assets will therefore be there for the children but not form part of their estate.

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Incapacity

Problem: If the client has not had the opportunity to put in place a Power of Attorney (POA) and they subsequently become incapax this will result in substantial problems for the family

Solution: With a FPT the assets in the Trust will be looked after “as normal” by the remaining Trustees.

Summary

The purpose of the Family Protection Trust is for the reasons outlined above should one or more be relevant to the client. We all work hard to build up our assets and the FPT helps ensure your assets, including your home and your savings, are protected for your intended beneficiaries.

Last Updated 23/06/2014