



CORNERSTONE WILLS

THE ESTATE PRESERVATION PROPERTY TRUST

What is it and what are the benefits?

Estate Preservation is used to keep the estate intact for the benefit of children or other nominated beneficiaries. Ensuring that children and other rightful beneficiaries will inherit your wealth regardless of what the future holds is important. Simple steps can be taken to ensure that assets are not "lost" into a new partner's estate should the current spouse remarry.

For most people, their greatest asset will be their Principal Place of Residence (their home) and using this in a Will Trust is easiest way of "preserving" your estate.

It is of increasing concern to people that this asset may be lost as an inheritance to their children in two main ways:

1. Subsequent remarriage or cohabitation of the surviving spouse after first death – which may mean the estate passes to new spouse/partner and not to children in the event of the surviving spouse then dying, or the estate is diluted in the event of such remarriage ending in divorce
2. Care costs in later life for the surviving spouse.

Since the Pre-Budget Report of October 2007, this type of planning has become much more important and relevant. As those married couples with estates up to £600,000 (twice the current Nil Rate Band allowance) may no longer require Inheritance Tax planning, their property may be at risk of not passing to their chosen beneficiaries as described above.

The Estate Preservation Property Trust is similar in practice to our IOU Discretionary Will Trusts and is no more restrictive. However, although with the latter only the prevailing value of the Nil Rate Band could be protected, clients are now able to leave potentially half the value of their property to their children with a life-interest to their spouse – potentially preserving much more than the prevailing Nil rate Band for the benefit of their children.

Prior to the Pre-Budget Report of October 2007, Estate Preservation Property Trusts were not as widely recommended as this type of estate preservation is deemed by the revenue as an "interest in possession" on the 2nd spouse's estate which still meant that the whole estate was subject to tax above ONE Nil Rate Band allowance – which meant there was no tax advantage in doing these trusts instead of an IOU Discretionary Will trust.

Now the Chancellor is allowing couples to use both Nil Rate Bands on 2nd death, Estate Preservation trusts have become a more attractive prospect.

How does it work?

In simple terms, the Estate Preservation Property Trust allows couples to 'Will' their portion of the property on their death to their chosen beneficiaries, thereby preventing the loss of the inheritance via the scenarios described above. The portion of the property 'Willed' on first death is then held in Trust for the chosen beneficiaries until second death.

Wills are written including our Estate Preservation Property Trust in each case, which leaves the share of the property 'in Trust' for the chosen beneficiaries. This Trust protects the interests of the survivor, allowing the survivor to live in the property until death, or until he/she cohabits or remarries.

If the survivor goes on to remarry, he/she cannot leave the whole of the property to their new spouse, as a portion is already owned by the Trustees on behalf of the chosen beneficiaries. The survivor can also move house if he/she so wishes, using the whole of the proceeds towards another property, or raise capital by purchasing a smaller property, a greater proportion of which will be owned by the Trustees.

Other Considerations

The way in which the property is owned by the couple must first be established. Most couples own as **Joint Tenants**. This means that both own the whole property together, and neither can then 'Will' the property to anyone on first death. The property passes by survivorship on first death, becoming solely owned by the survivor.

So, if the property is owned as a Joint Tenancy, it must be changed to a **Tenants in Common**. As Tenants in Common, each one of the couple owns a definite share of the property, commonly 50%, and may 'Will' their share to their chosen beneficiaries. Severance of Joint Tenancy – changing from Joint Tenants to Tenants in Common – is a simple procedure which can be easily arranged by Cornerstone Wills when Wills are prepared.

A Case History - How the children lost out on their inheritance

John and Amy owned their home jointly, which was worth £450,000, and a further £75,000 in investments. Their existing Wills provide that they passed their assets to each other and, on second death, to their two children. Amy died in June 2005 with all her Estate passing to John. John remarried in August 2006 to Julie, a family friend. They purchased a new property together after their marriage, and reminded each other that they needed to write new Wills, but had not done so when John died in October 2007.

The house automatically passed to Julie, by survivorship, as it was owned as a Joint Tenancy. The investments and cash also passed to Julie as she is entitled to the first £125,000 of his estate as his wife. His children inherited nothing on his death nor on Julie's death.

How John and Amy could have protected their children

An Estate Preservation Property Trust in each Will is a straightforward way to protect the children's inheritance against remarriage or care fees. The Will leaves each of the couple's shares to the children 'in Trust'. The survivor would be able to remain in the property, or sell it and buy another, until they die, cohabit or remarry. After first death, the children own half of the property in Trust, and may inherit the other half on second death.

If the remarriage/cohabitation clause had been used (and this optional), John would have had to pay the children their share of the property at this point. With this knowledge, he may also have purchased any new property with Julie as Tenants in Common, each again leaving half to their respective children in trust so that they do not lose out at all.

Had John instead needed to go into care as he got older, once again half of the property would already be owned by the children in trust on the death of Amy, and therefore safe from being used to pay care costs. The other half of the property, owned by John, may be difficult to sell to raise the funds to pay for care, as few people would want to buy half a house although the Local Authority is empowered to place a charge for John's care costs on his share.

HMRC practice and the laws relating to taxation are complex and subject to individual circumstances and changes which cannot be foreseen. This Note is therefore appropriate for use based on present circumstances. It is no way exclusive and should only be taken as an outline. Whilst every effort is made to ensure that this information is helpful, accurate and correct, it may change or may not apply to your own personal circumstances. Before taking any action, you should seek appropriate professional advice, as Cornerstone Wills cannot accept responsibility for any action taken on the basis of this information alone.

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