



Flexible Life Interest Trust

Whilst writing a Will should ensure that your estate will pass to your spouse or your partner on your death, it doesn't necessarily mean that it will pass in its entirety to your secondary beneficiaries (e.g. your children) when your spouse/partner eventually dies. This might be for a number of reasons, for example:

- They find a new partner or (re-)marry and leave their estate to the new partner
- They (re-marry) but subsequently divorce
- They purchase joint property that won't pass via their Will if they die first
- They go bankrupt
- They need long term care
- They rewrite their Will after your death

One option might be to draft a Will that gifts some or all of the estate to your children instead of the spouse/partner. This, however, is fraught with dangers, such as:

- An inheritance tax bill on your death that otherwise wouldn't have arisen
- You leave your partner/spouse with insufficient funds for their continued life and/or children's upbringing
- You leave your partner/spouse owning the home with your children (or trustees for minor beneficiaries) – and what if they themselves sell up, divorce or go bankrupt?

Another option might be to draft a Will that gives your partner/spouse a "standard" life interest in your estate such that it passes to your children on their subsequent death. But, as the life tenant only has access to the income/interest (with the capital ringfenced), will this option leave your partner with sufficient funds once you've gone?

The answers to all the issues posed above are provided by the Flexible Life Interest Trust (FLIT).

A FLIT has been described as the ideal modern Will as it allows you to make adequate provision for your surviving spouse/partner, whilst guaranteeing that any unused funds will pass to your secondary beneficiaries on your partner's subsequent death

The key benefits of the FLIT are:

1. The survivor (the "life tenant") has full access to the income and capital during their lifetime
2. For married couples there is no Inheritance Tax on first death
3. The assets placed in the FLIT on 1st death are protected from all the potential losses described in the bullets above
4. Your secondary beneficiaries are guaranteed to inherit the remaining capital in the trust on 2nd death
5. Further IHT planning options are available to the life tenant (see case study 2 overleaf)



CASE STUDY 1.

John is 50 and has two children Jack and Jill from his marriage to Joanne. They divorced and John is now married to Amy who is 10 years younger than John. Together they have a son Alex and have a sizeable estate and, as it happens, John still owns the majority of the assets in his sole name. John is concerned that Jack and Jill might miss out on their inheritance as Amy could rewrite her Will or could remarry after John's death. However, Amy wouldn't have sufficient funds of her own to support Alex should John leave his estate to Jack and Jill (which would incidentally trigger a charge to Inheritance Tax).

Cornerstone Wills drafts John's Will to include a FLIT that gives Amy access to the whole of John's estate on his death but on Amy's death he knows that the remaining funds will pass to Jack, Jill and Alex in equal shares.

CASE STUDY 2.

Paul is married to Sally and they have two children together. They own the main home jointly and have an estate value of £900,000. Paul is concerned about Inheritance Tax (there would be an IHT bill of £100,000) and also, although fairly young and healthy, the future impact of Long Term Care costs on his estate and his children's inheritance. He would like to gift some money to his children in his Will to help them on their way up the property ladder but doesn't know how much to give them as he doesn't know how much Sally needs after he's gone and also he knows that if he does this that Sally's tax-free allowance available to her on her death will be reduced by his gifts.

Paul and Sally turn to Cornerstone Wills for estate planning advice. We change the ownership of the family home to tenants in common (this gives Paul and Sally a 50/50 share in the home and allows both to gift their share in their respective Will) and draft Paul's and Sally's Wills to include the FLIT. We also give them advice on how the trust funds could be used after first death, especially with regards to the mitigation of inheritance tax, and draft letters of wishes to accompany each FLIT.

Unfortunately Paul dies five years after his visit to our offices and the execution of his Will. Sally, as Paul's executor, sets up the FLIT and passes Paul's assets into the trust.

Six months later Sally gifts £100,000 from the trust funds to each of her children. (For Inheritance Tax purposes this is treated as a Potentially Exempt Transfer). Sally still has access to the remaining £250,000 (which includes Paul's half share in the home) in the trust.

Sally dies eight years later, the last three of which were spent in a care home.

The consequences of the FLIT and her actions after Paul's death are:

1. No Inheritance Tax is paid on Paul's death
2. The 2x£100,000 gifts to her children are also free of IHT as she survived for 7 years after having made them
3. She has the full £650,000 tax-free allowance on her death
4. She had full access to her own estate as well as the funds within Paul's FLIT
5. The Local Authority could not include the funds in Paul's trust when assessing Sally for Long Term Care funding.