



Cornerstone Wills -
February 2014
newsletter

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Flexible Life Interest Trusts – The perfect modern Will?

Our final tax planning tip as promised, we are looking at the Flexible Life Interest Trust. People often want to leave some or all of their assets to their children but is this always a good solution if there is a surviving partner?

Our experience has shown that more and more these days, when people make a Will they express concern about what happens if their partner re-marries or needs to go into long-term care and their estate will not end up with their children or intended beneficiaries.

So the usual view on leaving assets directly to children is that at least they will inherit some of the estate, irrespective of what happens to the surviving partner before their death but there are many problems with this route including:

1. There could be Inheritance Tax (IHT) to pay on first death if the assets gifted to children are greater than the prevailing IHT allowance (currently £325,000).
2. A surviving partner may not want to share their home or assets with their children or step-children and much as you may love your own, you may not always love their respective partners! Then what happens if your children get divorced or go bankrupt? The home and the assets would then be vulnerable to loss and who wants to feel vulnerable if their own home, especially as you get older.
3. If the surviving partner wants to use or sell the assets, the children (or their trustees, if the children are too young to inherit) must agree and if it's the family home that's shared, then the sale could be subject to Capital Gains Tax if it's not also the children's main home.



FLITs - So what is the solution to accommodate everyone?

Most couples want to protect their assets for future generations but want to make sure that their surviving partner is also protected and that the minimum amount of IHT is paid. For those couples including a [Flexible Life Interest Trust \(FLIT\)](#) in a Will is the perfect solution.

Because it's a Will Trust the FLIT is not implemented until the death of whichever partner dies first, so any decisions can be deferred until they are needed. No one knows what the future may hold or who will die first and the surviving partner's age and circumstances at that time. The advantage of this is that all real decisions about the couple's assets can be left until after 1st death and based on the circumstances of all parties at that time. The surviving spouse can then start to do some effective tax planning at that time and release assets to children/step-children and their descendants either directly or within the underlying Discretionary Trust that lies at



the heart of the FLIT to protect assets not just on 2nd death but also for future generations.

The inclusion of a FLIT in a Will gives to the surviving spouse/partner (the “Life Tenant”) a right to receive income from Trust Property (including cash) for his or her lifetime as well as a right to occupy a property as a home. For IHT purposes the gifting of assets to a FLIT (where the Life Tenant is your spouse) is the same as gifting directly to the spouse. The full inter-spousal exemption applies so there is no IHT on first death. The Life Tenant of such a FLIT has a “Life Interest” but it is flexible because it allows the Trustees to advance capital as well as income to the surviving spouse/partner, if required, whilst protecting any unspent capital for future generations. The letter of wishes left with the Will in respect of the FLIT, acts as guidance to the Trustees for what is wanted in this respect.

Shari`a Wills

The Prophet Muhammed said *“It is the duty of a Muslim who has something to be given as a bequest not to spend two nights without making a Will about it”*.



Although the Koran teaches all Muslims to prepare for their death, many Muslims find the preparation of their Will a daunting task. All Wills in England and Wales must be drawn up in accordance with the laws of England and Wales. Hence an Islamic Will can be drafted in accordance with *Shari`a* law and will be valid if it meets the legal formalities of the Wills Act 1997.

After debts and funeral expenses are paid, up to a third of the estate can be given in bequests and the rest given in fixed shares according to *Shari`a*. Some of the key points are identified below:

- On the death of his wife, the husband will inherit one half of the estate if she has no children/grandchildren or one quarter if she has children/grandchildren
- On the death of her husband, the wife will inherit one quarter of the estate if he has no children/grandchildren or one eighth if he has children/grandchildren
- If a Muslim dies leaving a non-Muslim wife, she is not entitled to a fixed share of the estate – only a bequest (and no more than the fixed share which the Muslim co-wives will inherit).
- Bequests cannot be made in favour of an heir who is already entitled to a fixed share
- There are 15 kinds of male relatives and 10 kinds of female relatives who are entitled to a fixed share – either through kinship or marriage.

So what are the potential issues with drafting a Will in accordance with *Shari`a* law? Three key ones are:

1. A potential Inheritance Tax bill on first death – because you aren't making use of the full tax exemption available between husbands and wives;
2. The surviving spouse/partner sharing assets with other family members and the consequences should those co-owners subsequently wish to sell or marry and subsequently divorce, go bankrupt or need long term care;

3. Under the Inheritance (Provision for Family and Dependents Act) 1975, there could be claims on the estate from the surviving spouse, children or other dependents if they have not been adequately provided for.

In August 2011 Sir Gerry Robinson, assisted by lawyer Sue Medder, discussed these issues in the BBC2 programme "Can't Take it With You".

At the time Sue Medder wrote:

"These days, we assume that men and women should be treated equally, but sometimes there are cultural or religious reasons why that isn't the case".

However, although under English law you are free to write whatever you want in your will, it is also possible for your family to contest the will after your death, if they feel it does not make sufficient provision for them. If the courts agree, for example, you have left too little of your estate to your spouse, they may intervene to increase the amount."

On the programme Sir Gerry spoke to a highly respected Imam to determine whether there was a solution to the three bullet points above such that it still meant that the Will was *Shari'a* compliant.

The solution was the Life Interest Trust.

Cornerstone Wills can help you set up a Life Interest Trust within your Wills. There are differing types of Life Interest Trusts and two of these are detailed on our website: [The Property Preservation Trust](#) and the [Flexible Life Interest Trust](#).

Testimonials

Thanks for all the help you gave us. You were an enormous help and thank you for your patience and the empathy shown to us, you were very understanding. Sue.
Carolyn, Egham

Cornerstone Wills are friendly, helpful and efficient. They made the whole process straight forward and easy to understand. *Mr Williams, Middlesex.*



Thank you

We would like to thank the following clients for referring new clients to us and in recognition have received a £10 Marks & Spencer voucher.

Tia, Paul & Laura and Barrie & Sheila

*Cornerstone
Wills
Thanks
You*

