



Flexible Life Interest Trust

Whilst writing a Will should ensure that your estate will pass to 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 partner eventually dies. This might be for a number of reasons, for example:

- They enter a new relationship and leave their estate to their new partner
- They (re-)marry and leave their estate to their new spouse, often unintentionally not knowing that the marriage would revoke any previous Will
- They (re-)marry but subsequently divorce with some of your estate passing through the divorce court to your partner's ex-spouse you've never met
- They purchase joint property with their new partner that won't pass via their Will if they die first but will automatically pass to the co-owner
- They go bankrupt
- They need long term care
- They rewrite their Will after your death which might exclude your chosen beneficiaries

What can you do to mitigate these issues?

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

- An Inheritance Tax (IHT) bill on your death that otherwise wouldn't have arisen
- You leave your partner with insufficient funds for their continued life and/or children's upbringing
- You leave your partner owning the home with your children (or trustees for minor beneficiaries) – and what if they themselves sell up, divorce or go bankrupt or die before you; who would own your home then?

Another option might be to draft a Will that gives your partner 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?

So what is the best solution?

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 partner, whilst guaranteeing that any unused funds will pass to your secondary beneficiaries on your partner's subsequent death

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. However, John still owns the majority of the assets in his sole name. John is concerned that if he leaves everything directly to Amy then 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 some or all of his estate to Jack and Jill (which could incidentally trigger a charge to IHT).

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.





The key benefits of the FLIT and other considerations are:

1. The survivor (the "life tenant") has full access to the income and capital during their lifetime
2. For married couples or those in a Civil Partnership there is no IHT on first death as the trust funds are accrued to the survivor's estate and tax on their death
3. The assets placed in the FLIT on 1st death are protected from all the potential losses described in the bullets overleaf
4. On second death your assets are protected within another (discretionary) trust to distribute to your beneficiaries or keep in trust in case of impending divorce or bankruptcy or other claims on those funds
5. Your own choice of secondary beneficiaries are guaranteed to inherit the remaining capital in the trust on 2nd death
6. With the introduction of the Residential Nil Rate Band and the conditions for claiming this allowance, it is best practice for IHT purposes to include a Property Preservation Trust for the property (that passes directly to the children on second death) and a FLIT for the rest of the estate
7. Further IHT planning options are available to the life tenant (see case study 2 below)

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 and also 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 IHT 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 (hers and Paul's) on her death
4. By gifting Paul's half-share of the home to a Property Preservation Trust instead of the FLIT Sally's executors are able to claim both Residential Nil Rate Bands on her death
5. She had full access to her own estate as well as the funds within Paul's trusts
6. The Local Authority could not include the assets in Paul's trusts when assessing Sally for Long Term Care funding.



*For simplicity, the word partner has been used throughout. This term refers to spouse, Civil Partners and unmarried partners