

Asset Protection Will Plan

Private client solutions for the St. James's Place Partnership

What is it?

The Asset Protection Will Plan consists of a pair of Wills and other documents designed to ensure that the maximum benefit of the family estate is available for your chosen beneficiaries and protected against claims of third parties.

Who is it for?

The Plan is suitable for anyone wishing to protect assets on death for the benefit of their family.

Married couples, civil partners and co-habitees may all benefit from the Plan.

How does it work?

If you leave your estate outright to your spouse or civil partner, it becomes part of their estate and so vulnerable to third party claims:

- if your spouse needs nursing home care the inheritance will be taken into account in a financial assessment;
- similarly, it will be taken into account when assessing your spouse's entitlement to other means tested benefits, which may mean that the entitlement is lost;
- your estate also becomes vulnerable to outside claims should your spouse remarry or become financially responsible for others.

Your intended beneficiaries may lose their inheritance as a result.

The Wills in this Plan ensure that the estate of the first to die is held in trust for the benefit of the survivor of the couple, rather than left outright to them. On the second death the remaining trust fund then passes to your chosen beneficiaries.

We will discuss with you and advise as to the best form of trust or trusts to achieve your purpose.

Case study 1 – protection against care home fees

Mr and Mrs Hill have four children.

The family has assets worth £600,000 split equally between the couple.

Mr Hill dies leaving his total estate to Mrs Hill, with no liability to IHT.

Mrs Hill needs nursing home care for a considerable number of years and becomes unable to deal with her own financial affairs.

Without this Plan

The value of the whole estate is taken into account when the local authority completes the financial assessment and no assistance with the care home fees will be received. The family must also make an application to the Court of Protection to authorise someone to deal with Mrs Hill's financial affairs. This is a slow process and in the meantime no financial decisions can be implemented on her behalf.

If this Plan is used

Mr and Mrs Hill have completed the Plan.

Mr Hill dies and his estate of £300,000 passes into a trust for the benefit of Mrs Hill. A life interest trust option was chosen by Mr and Mrs Hill, so Mrs Hill is entitled to the income from the trust. This is treated as a transfer between spouses and therefore the whole of Mr Hill's nil rate band exemption is available to carry forward and be used on Mrs Hill's death.

The capital investments in the trust cannot be taken into account in any financial assessment for her care home fees.

The trustees administer the trust fund and can use the income and lend the capital for Mrs Hill's benefit whilst an application is made to the Court of Protection to administer her own share of the family estate.

On Mrs Hill's death the value of the trust capital is added to her own estate of £300,000 in order to calculate the IHT liability but she has the benefit of the enhanced nil rate band allowance and therefore there is no inheritance tax to pay.

The remaining estate and trust fund pass to the four children.

Case study 2 – ensuring your chosen beneficiaries inherit your estate

Stephen and Katie Dale have both been married before and each have two adult children from their previous marriages. They wish to ensure that the surviving spouse maintains their standard of living but that their own share of the family assets will pass on to their own children on the second death. The total family estate is valued at £1m.

Without this Plan

Their present Wills leave everything to each other on the first death and the estate is then split equally between the four children on the second death.

Katie Dale dies and Stephen Dale remarries. His new wife has children of her own. He loses touch with Katie's children (his step children) and on his death his new Will leaves his estate to his new wife and his own children. Katie's children inherit nothing and have no claim against their late step-father's estate.

If this Plan is used

Mr and Mrs Dale have completed the Plan.

Katie Dale dies and her estate of £500,000 passes into trust for the benefit of Stephen Dale during his lifetime and for her own children on his death. The capital is fully protected from the claims of third parties and Stephen Dale is entitled to the income from the trust for his life. His subsequent marriage makes no difference to these arrangements and his new wife and her children have no claim against the trust funds.

On Stephen Dale's death the trust funds pass to Katie's children after deduction of any IHT payable on the trust funds.

What will we provide you with?

This Plan consists of:

- a pair of Wills; and
- any associated documents, such as a pilot trust.

The cost

£1750-£2250 plus VAT.

This product can be combined with either (or both) of our Exempt Asset trust or Property Discount bolt ons. Please see our Information Sheets on Exempt assets, Discretionary trusts in Wills and Property fragmentation (Wills) for more information.

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