

Flexible Wills for a Single Person

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

What is a Flexible Will for a single person and who are they for?

The Flexible Will for a single person is a Will designed for a single person who wishes to benefit children in their Will. It provides protection within the Will for the children by ensuring that their inheritance cannot be squandered or used to meet third party claims.

How does a Flexible Will for a single person work?

On the death of the single person his or her estate is left in trust(s) for the benefit of the children he or she would like to benefit. The trusts for the children are either:

- **Discretionary trusts:** these provide that the trustees can, at their absolute discretion, choose to benefit any of a class of beneficiaries (typically children and their issue and future bloodline descendants). No beneficiary has any entitlement to income and/or capital from the trust and the discretionary nature of the trust means that it is very flexible. The trustees in making their decision can be guided by a Letter of Wishes left by you stating the factors that you would like them to bear in mind when exercising their discretion.
- **Immediate post-death interest trusts:** these trusts provide that the children are entitled to the income produced by the trust investments during their respective lifetimes; the capital passes after their death to their children. Full powers to advance capital to the children at the trustees' discretion can be included and again the trustees can be guided by a Letter of Wishes in making their decision.

What is the IHT position?

If you opt for discretionary trusts for the children that you wish

to benefit there would be no IHT payable on the children's deaths on the assets in the discretionary trust, as these are outside of their estates, but there would be a charge to IHT on every ten year anniversary of the trust and on capital being distributed. This charge to IHT would be at a current maximum rate of 6% (and can be less than this).

If you choose immediate post-death interest trusts, the IHT will be the same as if you had included outright gifts to the children. However, on the death of the children the value of the assets in the trust would be added to the assets in the child's free estate, IHT calculated and apportioned between the trust and the child's own assets. No more IHT will be payable on the child's death than if an outright gift to them had been made.

Our Information Sheet, "Will trusts for children", sets out in detail the relative taxation positions of both types of trust and covers IHT, income tax and capital gains tax.

How does a Flexible Will for a single person protect assets?

Whether you chose a discretionary trust or an immediate post-death interest trust, the capital in the trust is protected. This is because the children can only receive capital at the trustees' discretion, enabling the trustees to control the situation and to avoid capital passing to children which might not be used in the way that you would want.

In addition, the capital (and income in the case of discretionary trusts) is protected from claims by third parties, in so far as is possible, such as creditors and estranged spouses. Moreover, if the child dies his or her spouse is not entitled to receive the

assets in the trust so they cannot be left outside of the family to a new partner. Discretionary trusts also have long-term IHT mitigation benefits.

Case Study

Sarah is divorced with two teenage daughters, Laura and Megan. Sarah decides to enter into the Flexible Will for a single person leaving her estate to discretionary trusts for the benefit of her daughters and their families.

All does not go well for Sarah's daughters. Sadly, Laura is killed in a car accident five years after Sarah's death. The assets in the discretionary trust do not form part of her estate and escape a charge to IHT. Laura's children continue to benefit from the discretionary trust set up under their grand-mother's Will and the assets do not pass to Laura's widower who remarries a few years later.

Megan is a self-employed businesswoman and, due to a downturn in business, runs into financial difficulties and is forced into bankruptcy. The assets in the trust are not her assets and thus unavailable to Megan's creditors. When Megan's bankruptcy is discharged the trustees are able to exercise their discretion to provide finance to her to enable her to re-build her business.

What will we provide you with?

- A Will incorporating your chosen trusts.
- A Letter of Wishes.

The cost

£1400-£1750 plus VAT.

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