

# Next Generation Protection Wills

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

## What are Next Generation Protection Wills and who are they for?

Next Generation Protection Wills are Wills designed for each of a married couple, or couple in a registered civil partnership, who have children. They provide protection within the Wills for the couple's children by ensuring that their inheritance cannot be squandered or used to meet third party claims.

## How do Next Generation Protection Wills work?

On the death of the first of the couple the entire estate of the first to die is left to the surviving spouse/partner. This is inheritance tax (IHT) efficient as there will be no IHT on the first death due to the surviving spouse exemption and, assuming no lifetime gifts have been made by the first spouse to die within seven years of his or her death, the first spouse's unused IHT nil rate band can be transferred to the surviving spouse and claimed on his or her death. The unused residence nil rate band can also be transferred to the surviving spouse.

On the death of the second of the couple the joint estate is then left in trust(s) for the benefit of the couple's children. The trusts for the children are either:

- **Discretionary trusts:** these provide that the trustees can, at their absolute discretion, chose to benefit any of a class of beneficiaries (typically children and grandchildren 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 your 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 your 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?

As mentioned above leaving the entire estate of the first to die to the survivor is usually a tax efficient option. If you decide to opt for discretionary trusts on the second death then to ensure that the IHT payable on your death is the same as if you leave your estate to your children outright part or the whole of your house (or assets equivalent in value if you have disposed of your home prior to your death) may need to be distributed from the trust to your "lineal descendants" (broadly your children, grandchildren and their spouses and civil partners) outright or on immediate post-death interest trusts within two years of the second death in order that your estate can take advantage of the residence nil rate band. However, there would be no IHT payable on your children's deaths as the assets in the discretionary trust 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 chose immediate post-death interest trusts, then the IHT on the second death will be the same as if you had included outright gifts to your children. However, on the death of your children the value of the assets in the trust would be added to the assets in your child's free estate, IHT calculated and apportioned between the trust and your child's own assets. No more IHT will be payable on your child's death than if an outright gift to your child 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 do Next Generation Protection Wills protect assets?

Whether you choose a discretionary trust or an immediate post-death interest trust, the capital in the trust is protected. This is because your 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 your 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, ensuring that your assets pass ultimately to your grandchildren.

Discretionary trusts have long-term IHT mitigation benefits.

### Case study

Andrew and Gillian are married with two teenage daughters, Laura and Megan. The couple decide to enter into Next Generation Protection Wills leaving their estates to each other on the first death and to discretionary trusts for the benefit of their daughters and their families on the second death.

All does not go well for the couple's daughters. Sadly, Laura is killed in a car accident five years after the death of the second of her parents. 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-parents' Wills 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?

- Wills for each of a couple incorporating your chosen trusts.
- Letters of Wishes.

### The cost

£2250-£2750 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.

For further information please contact:

Bristol

**Anthony Fairweather 0345 209 1265**  
anthony.fairweather@clarkewillmott.com

Bristol and Cardiff

**Jane Halton 0345 209 1417**  
jane.halton@clarkewillmott.com

Bristol and London

**Carol Cummins 0345 209 1275**  
carol.cummins@clarkewillmott.com

**Liz Smithers 0345 209 1115**

elizabeth.smithers@clarkewillmott.com

Manchester and Birmingham

**Paul Davies 0345 209 1783**  
paul.davies@clarkewillmott.com

Southampton

**Emma Pope 0345 209 1823**  
emma.pope@clarkewillmott.com

Taunton

**Tom Chiffers 0345 209 1693**  
tom.chiffers@clarkewillmott.com

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