

# Home Protection Trust (HPT)

When making a Will it is usual for clients to ask that the family home be passed down to children. Unfortunately, even with a valid Will in place there are many reasons why this may not happen. For example, with residential care home fees often around £750 per week, it does not take long for the capital in the family home, accumulated over a lifetime of hard work, to pass instead to the local authority.

Even if the family home does pass to children on death, it is not uncommon for a child to later become divorced with a share of the property passing to the child's ex-spouse. In addition, inheritance can be lost where a child has financial problems or goes into care themselves, again resulting in the family home being lost to a child's creditor or the local authority.

With a 'Home Protection Trust' it is possible to help ensure that the family home stays in the family no matter what the future holds. A HPT is designed to allow the owner(s) of a property to keep control of and continue to reside in a property whilst adding protection against unforeseen future liabilities. This simple planning is one of the most effective ways to ensure that the family home stays in the family.

## WHAT ARE THE BENEFITS?

### REDUCE COSTS

Where a property is transferred into a trust during a client's lifetime, when the client passes away the costs involved in administration are significantly reduced.

### AVOID CARE FEES

Where a client needs care in later life, instead of passing to beneficiaries, the family home could instead pass to the local authority. With a HPT this could be avoided.

### BANKRUPTCY

After inheriting property if a beneficiary later has financial difficulties or goes bankrupt, the property may be lost to the beneficiary's creditors, a HPT can help avoid this.

### SIMPLIFY ADMINISTRATION

When we pass away there is more to deal with where a property is involved, if a property is instead held on trust the administration process is quicker and simpler.

### FUTURE DIVORCE

If a beneficiary gets divorced after inheriting property a share of the property may be lost. Where the property is in a trust this can often be prevented.

# How do they work?

## Create Home Protection Trust (1)

The first step is to create a bespoke trust for the property to be transferred into. The type of trust used is a lifetime discretionary trust, because of the trusts protective qualities we call it a 'Home Protection Trust' or 'HPT' for short. The person who transfers the property into the trust is called the 'Settlor'.

Once all the paperwork is signed the property is legally owned by the trust. The trust is managed by the trustees (who are often the settlor's children or close family). The trustees' role is to use the trust assets (the property) for the beneficiaries. The settlor is the main beneficiary of the trust; this means that they can continue living in the property for the rest of their life.

## The Settlor Passes Away (3)

Legally nothing changes, the property remains in the trust and does not form part of the deceased's estate, therefore there is no administration to complete or fees to pay and no delays (although for inheritance tax purposes the property will still be taken into account).

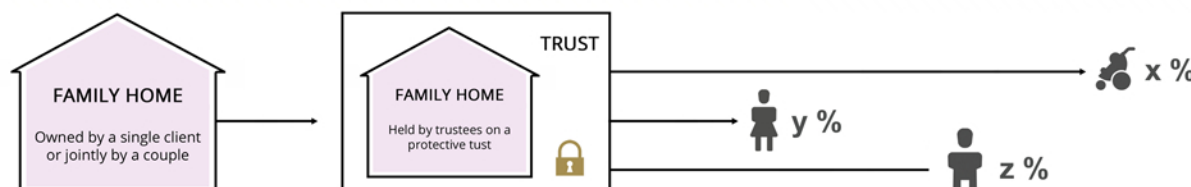
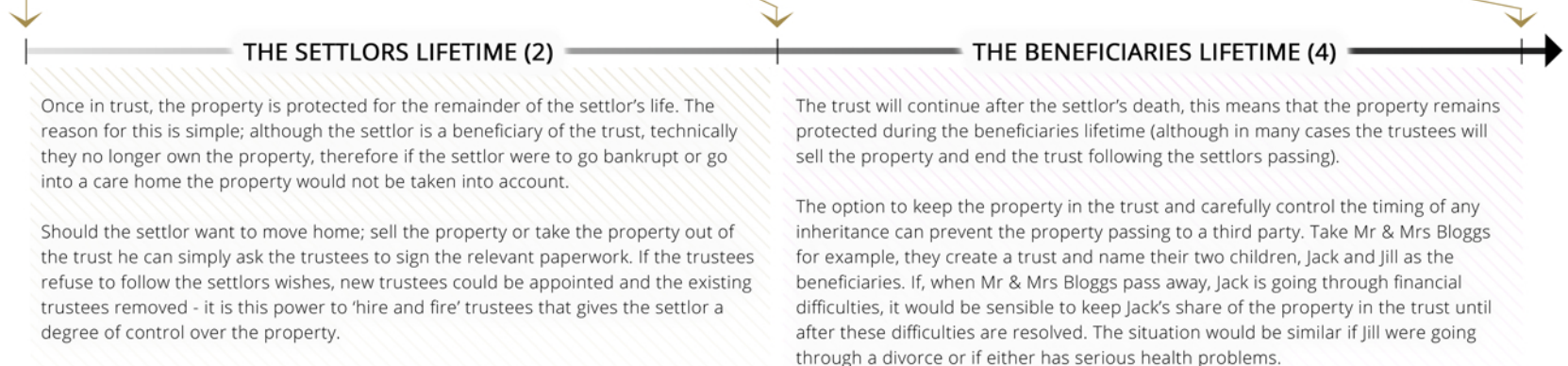
Because the primary beneficiary (the settlor) has passed away, the other beneficiaries (often the settlor's children) are able to benefit from the property from this point onwards.

## The Trust Ends (5)

The trust ends when the trust's assets are transferred into the names of the beneficiaries. This might be shortly after the settlors' death or years later, the trustees must decide when to make distributions depending on the situation at the time.

Also the trust will not necessarily end when the house is sold; it could be that following a sale the sales proceeds remain protected in the trust. This could be useful if one beneficiary wanted to take their share but another beneficiary was going through a divorce for example.

Legally the trust's assets must be distributed within 125 years, although in practice trusts rarely run for the full 125 years.



# Q & A

## What is a trust?

A trust is an arrangement where a person (the settlor) transfers an asset (in this case the family home) to another person (the trustee) for safekeeping. These arrangements have been recognised in law for hundreds of years and have many potential uses.

## Do I need a Home Protection Trust?

Anybody who owns their own home - with or without a mortgage - can benefit from a HPT, especially where:

- There is a desire to simplify administration and reduce administrative costs on death; or
- It is preferable that the home passes to children or other beneficiaries without exception; or
- A beneficiary may 'waste' funds for lack of maturity or 'lose' money for lack of financial acumen; or
- There is the possibility of a beneficiary divorcing in the future; or
- Beneficiaries receive means tested benefits or support.

## Is the trust guaranteed to work?

Provided the trust is not created to avoid a foreseeable liability there should be no problems. However, if for example it is clear that existing financial problems are likely to result in bankruptcy, it is possible that the transfer of assets into trust could be 'undone' following a challenge by creditors, equally if it is clear that health issues are likely to create a need for nursing or social care, the Local Authority could challenge the validity of the settlement.

## Does it matter if I have a mortgage?

The existence of a mortgage or charge on the property does not prevent the property being placed into Trust.

## What is a Trustee?

When a home is transferred into a trust it is put into the names of persons called trustees. Trustees have the responsibility of looking after the property for the beneficiaries. Clients often appoint their children as trustees, although professionals can be appointed. A common misconception is that a beneficiary cannot be a trustee, this is not the case, and indeed beneficiaries are often trustees. Trustees cannot do whatever they like; they must always act in accordance with the terms of the trust deed, for example they must allow the settlor to remain in the property.

## Can I still move house?

Yes, but it would be the trustees who sign the relevant paperwork.

## Can other assets go into the trust?

As the name suggests a Home Protection Trust is designed specifically for protecting the family home, so whilst it is possible to transfer other assets into a HPT, it may be necessary to take additional advice, especially where the other assets are income producing (a buy-to-let property for example).

## Are there any long term costs?

As the trust is paid for by a single payment at the time of drafting, often there will not be any additional costs over the years. In fact the trust is actually designed to reduce costs in the long term, particularly the costs of estate administration on the death of the settlor. However there would be additional fees should the settlor wish to move home as the trust would need to be amended. Also, if the house is sold following the settlors death and the sales proceeds remain in the trust there will be fees to produce annual reports and tax returns for the trust.

## Should I just give the house to children?

It is rare that we would recommend a client make an outright gift of their home. Consider what would happen if following the gift, the recipient was to go bankrupt, pass away or become divorced; apart from losing control the client could lose their home. Without the protection and safeguards afforded by a trust, gifting your home could present a serious risk.

## Will this trust help with Inheritance Tax?

Yes and no. As the settlor retains a 'Life Interest' in the property it remains part of the settlor's estate for inheritance tax purposes, however because the trust continues after the settlors death the trust assets will not be taxed as part of the beneficiaries estates when they pass away, this can be significant advantage over the long term, potentially saving tens of thousands of pounds.

## Who gets the property when I die?

The settlor decides who the beneficiaries are when the trust is created (children, grandchildren, charities etc.), additional beneficiaries can also be added at a later date. It is the beneficiaries who will effectively inherit the property after the settlor passes away. Trustees also have the flexibility to change the distribution depending on the situation at the time; it is this flexibility that makes the trust so effective.

## EXAMPLES

### Example 1

*Following a stroke Richard has gone into a care home. Many years before he paid off his mortgage and transferred his property into a HPT for his family, as a result his property will not be assessed to pay for his care.*

### Example 3

*Jack and Sarah are beneficiaries and trustees of a HPT which owns their late parents property. When their parents passed away they sold the family home and placed the sales proceeds (£300,000) into the trust; they use this money to pay for holidays and other luxuries. Jack has recently been through a divorce, this did not affect the trust fund. Sarah has been suffering from dementia and may need to go into a care home; again the trust fund will remain unaffected.*



☎ 01785 336222

Over the years Dunham McCarthy has moved from strength to strength, providing innovative financial and legal services to private clients across the country.

Our team has grown to accommodate each of our 20,000+ existing clients individual needs, so contact us today and find out how we can help you and your family.

#### LIFE INSURANCE

Advice on a range of term and whole-of-life insurance policies from leading providers.

#### ILLNESS PROTECTION

Compare hundreds of critical illness, serious illness, accident and sickness policies.

#### GENERAL INSURANCE

Insurance policies for buildings, contents, businesses and much more.

#### MORTGAGES

Sourcing residential, buy-to-let and commercial mortgages for clients from a range of providers.



#### WILLS & TRUSTS

Detailed advice and drafting of Wills including the production of various Will trusts.

#### POWERS OF ATTORNEY

Producing documents for and providing advice on appointing attorneys both lasting and general.

#### HOME PROTECTION

Protecting clients homes from various risks ensuring assets pass to the intended beneficiaries.

#### FUNERAL PLANS

Helping clients plan and pay for their funerals in advance reducing long term costs in real terms.

#### PROBATE

The administration of the deceased's estate in accordance with the directions laid out in their will.

#### WEALTH MANAGEMENT

Detailed analysis and risk based advice on pensions and investments.

#### PENSION ADVICE

Helping clients plan for their retirement by maximising existing pension growth or starting a new scheme.