**What is a Protective Property Trust?**

A Protective Property Trust (PPT) is a trust that I normally included within a Will to protect the main residential property so that it passes to the Testators children on the death of the surviving spouse/civil partner/joint owner.

**Does the property have to be held in joint names?**

No, the property can be held in the name of one or two people and will depend on individual circumstances.

However, if more than one person own the property then we must bear in mind as to whether the property is held as joint tenants or tenants in common. If a property is held as joint tenants, this means that each person owns half of the whole property and then the property passes automatically to the surviving joint owner on the first death and does not pass under the terms of the Will, or according to the rules of intestacy.

A property held as tenants in common means that each owner owns 50% and each owner is entitled to deal with the property under the terms of their Will, or it passes according to the rules of intestacy.

**How does a PPT work?**

On first death, half the property belongs to the Trustees, and the other half is owned by the survivor. The survivor is entitled to live in the property for the rest of their life, but the Testator has the choice of including situations as to when the Trust can end:

* On the death of the survivor;
* If the survivor remarries;
* If the survivor co-habits – this is hard to enforce and is therefore not recommended.
* If the survivor no longer needs the property as their home.

**Who pays all the bills?**

The Will normally states that the survivor will need to pay all the bills, insurance, and repairs, which they would have to do if they owned the property outright. The reason for this is that the Trustees will have no money in the Trust – there is only the property.

**What does this mean for the family?**

Depending on the circumstances, the property could potentially not pass to your children. For example:

Andrew is married to Brenda and they have 3 children. The house is owned jointly as joint tenants. Brenda dies and so the whole house is automatically passed to Andrew. Andrew remarries Caroline who has 3 children of her own. Andrew leaves the house in his sole name and does not make a Will. When he dies, the house is worth £250,000 plus he has about £15,000 in savings, and because he died without a Will, the laws of intestacy say that the surviving spouse (Caroline) is entitled to receive the first £270,000 of the Estate. As Andrew’s Estate is less than this, Caroline gets all of it, and Andrew’s children get nothing. If Caroline then dies without a Will, everything will go to her children, and Andrew’s children get nothing.

However, if Andrew and Brenda had professionally drawn up Wills, they will have considered with their advisers the benefit of a PPT. So, when Brenda dies, Andrew is only entitled to live in the half of the house that once belonged to Brenda, and in her Will it will depend whether she has included a trigger to end the trust:

1. If there is no trigger then Andrew can live there for the rest of his life, whether or not he marries or cohabits. When he dies, Brenda’s share passes to her children under the terms of her Will, and Andrew’s share will pass under the terms of his Will – which may be his children if he has not remarried. If Andrew goes into a care home and is no longer living there, the Trustees can, in conjunction with Andrew or his attorneys, rent the property out, and Andrew is entitled to receive the income from his half share and from Brenda’s share.
2. If the trigger is that if Andrew re-marries, then Brenda’s trust will come to an end, and essentially the 3 children are entitled to the money from Brenda’s share of the property. Andrew will either need to pay the children or he can rent it from them (with their agreement), or the property has to be sold.
3. If the trigger is that if Andrew no longer needs it as a home, this usually means that perhaps Andrew has gone into long term care. This means that the house has to be sold, including Andrew’s share, and Andrew will have his half share to pay for his care and the 3 children will have Brenda’s share.

It is important that you discuss these triggers with us to see which one suits your circumstances.

**Can we not just leave the half share direct to the children on the first death?**

You can, but there are a number of disadvantages:

1. If any of the children become divorced or bankrupt, their portion of house could be taken into account in those proceedings, and potentially the survivor could be forced to sell the house in order to pay out.
2. If there are any tensions within the family, there is potential that the survivor may be forced to sell the house in order that the children can have their money.
3. There is potential Capital Gains Tax payable by the children when the house is eventually sold, particularly if they do not live in the property. The reason for this is that they are entitled to their share from the date of the first death, but it is held in trust, they are not entitled until the survivor dies, or goes into care, or remarries (i.e., the trigger point).

**Does this save Inheritance Tax?**

Unfortunately, not – the survivor has a “right” to live in your half share until the trigger point, so when they die, the “right” is added to the value of their Estate and is potentially taxed. We call this type of trust as being “tax neutral” as there is no saving and there is nothing extra to pay. However, if the trigger point is earlier than death of the survivor this may be regarded as gift from the survivor (because they are giving up their right), so advice should be sought to see if this is going to cause a problem.

**Can the property be sold even if the survivor is living in the property?**

Depending on the terms of the Will, it may be that we include the power for the property to be sold and another one purchased on the same terms. This is particularly useful if the house is too big for 1 person to live in and they would like something smaller (this is called ‘downsizing’).

For example:

The house owned by both parties is sold for £300,000, and the house wants a smaller house for £200,000. The survivor still own half the house and the Trustees owns the other half. After the purchase of the new property there is £100,000 is left over. Here, £50,000 goes to the survivor (because they own 50%) and the other £50,000 is given to the Trustees and is dealt with as per the terms of the Will (see below)

**If the survivor downsizes, what happens to any money left over?**

Again, there are a number of ways to deal with this:

1. The monies can be paid to the children;
2. A gift can be made to the survivor (care and advise is needed);
3. It is held in trust to provide an income for the survivor until the trigger point to end the trust. We recommend that the Trustees seek independent financial advice to invest the monies.

**Can the survivor take out Equity Release?**

Essentially no they won’t be able to as they do not own the whole property and most Equity Release companies will not be able to lend to the Trustees.

Likewise, if before you die, you and your spouse take out Equity Release/Mortgage, you must update your Will, as it will not be possible to include a PPT in your Trust if there is any borrowing secured on the Property, unless your Estate has the ability to repay the lender on your death.

**Does anything need to be done on the first death?**

Yes! Your Executors will need to obtain a Grant of Probate and then arrange for the house to be transferred into the joint names of the survivor and themselves as Trustees as Tenants in Common. We would strongly recommend that advice is sought when the time comes, and potentially a solicitor may be required to deal with the transfer of title.

Currently all Trustees will have to register the Trust on the Trust Registration Service (TRS) with HMRC even if there is no tax to pay, but this may change. Therefore, advice from a specialist Trust adviser is potentially essential.