

Protective Property Trusts

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1. **What is a Protective Property Trust?**

A Protective Property Trust (PPT) is one of the most widely used trusts in wills today. It gives another person, known as the Life Tenant (usually a spouse or partner), the right to live in property for the rest of their life or for a specified period.

If the life tenant wishes to move, the trustees can sell the property and use the sale proceeds to purchase a substitute property for the life tenant to live in. Any additional sale proceeds will remain in trust, and the income from the funds will be paid to the Life Tenant. Powers to advance capital can also be included, should the clients wish. At the end of the trust, the property can pass to other beneficiaries (usually children).

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1. **Why use a PPT?**

The most common use of a PPT is between spouses who grant each other a life interest in the family home and then ensure that their shares in the house will pass to their children at the end of the trust. Gifting the share in the home to the surviving spouse outright in the Will or allowing it to pass to them by survivorship can cause several problems.

If the survivor remarries, the house could be passed to their new spouse under a new Will/by intestacy, or if this new marriage ends in divorce, the house could form part of the divorce settlement. A PPT will ensure that the children (or other chosen beneficiaries) inherit the deceased’s share.

A surviving spouse could be subject to long-term care fees, medical bills or bankruptcy. If the deceased put their share of the property into a PPT on the first death, that share will be owned by the trust rather than the spouse outright and is therefore sheltered from the surviving spouse’s creditors.

PPTs can help couples who have children from previous relationships. The survivor can live in the home, and each can leave their share to their own children. This prevents the surviving spouse from potentially disinheriting them. The power to downsize can be useful as the Life Tenant may not be able to cope with a larger property they grow older or have single income.

**Example 1**

Paul and Sally are a married couple in their 60s. Both have been married previously and have children from their previous relationships. Their home is owned as joint tenants, and they currently have home-made wills with each leaving their estate to their own children. Below is how the house would pass.

In this situation, Paul’s children would not receive any benefit from the house.

**Example 2**

Paul and Sally severed the Joint Tenancy to Tenants in Common and created a new will, including a PPT. Each gives the other a life interest in their share of the property, and at the end of the trust, their respective shares will go to their own children.



**Example 3**

 After Paul’s death, Sally decides the house is too large for her and wishes to move to a smaller property. She sells the house and uses her share and the share in trust to purchase a bungalow. The surplus of Paul’s share remains in the fund to be inherited by Paul’s Children. The funds are invested to provide Sally with income if she requires it; if not, the fund grows.



**3. RNRB**

The Residential Nil Rate Band (RNRB) currently has an extra £175k IHT allowance, which will be available in most cases. In the usual scenario of spouses, as long as the eventual beneficiaries on the second death are direct descendants (including Stepchildren & their children), the RNRB will be available. However, where beneficiaries are not direct descendants (for example, nephews and nieces), the RNRB will not be available.

If the Life Tenant is a direct descendant, RNRB will be available on the Testator’s death, as for IHT purposes, the descendant will be seen as inheriting the property. In all other cases, RNRB will not be available.

**4. Inheritance Tax**

PPTs are not tax-saving devices. For IHT purposes, placing a property into a PPT over gifting the property outright does not offer any advantages.

A PPT is an interest in possession trust. This means a Life Tenant will be seen as inheriting the property for IHT purposes. It is then seen as part of their taxable estate when they die.

In most cases, this won’t cause issues as the surviving spouse will be the Life Tenant of the trust, and the spousal exemption shall apply. The property will only be assessed for IHT at the end of the trust.

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Where a couple is unmarried, or the Life Tenant is not a spouse, the spousal exemption does not apply, and the property will be assessed as part of the Testator’s estate when entering the trust and as part of the Life Tenant’s estate on their death. If clients are unmarried and are concerned about an IHT, other options, such as a Nil Rate Band Discretionary Trust (NRBDT), could be considered.

Where a PPT is not to end on the death (e.g. on remarriage), the gift of the property to the beneficiaries at the end of the trust will be seen as a potentially exempt transfer (PET) from the Life Tenant’s estate for IHT purposes. It will be subject to the seven-year rule.

1. **Joint Tenants or Tenants in Common?**

Please note that for a PPT to be used in a Will, the property must be held solely or as Tenants in Common.

What does this mean?

To simplify, (Tenants In Common =50% each) and (Joint Tenants = 100% each) refer to how a property is held or owned, and this ‘ownership’ is registered with the Land Registry. Traditionally, when houses were purchased, the owners would have been registered as joint tenants. This would have meant that if one tenant died, the other tenant would have inherited the property by survivorship because they already owned it 100%.

Holding the property as tenants in common means each owner has a share of the home, which can be gifted via their will. This is usually 50/50 but can be a pre-agreed split. We would always advise that the title is checked, as there are occasions when clients may believe the house is held as tenants in common when, upon checking to verify this, the home is held as joint tenants.

For more detailed information visit:

<https://www.fernwills.com/trusts-articles/property-protection-trust>

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