Protective Property Trust

A Protective Property Trust (PPT) is a type of Will based trust designed to protect your property, or your share of it if you own it jointly with another person.

When considering a PPT it is important to be able to distinguish the difference between tenants in common and joint tenants.

If you own your property jointly with another person or people there are two ways that you might hold the property. You could be either joint tenants or tenants in common.

In the context of joint tenancy and tenants in common 'tenancy' means ownership and has nothing to do with renting!

If you hold your property as joint tenants with another person this means that both owners own 100% of the property, not a divided share. You have equal rights to the whole property, and if the property is sold you will each be entitled to an equal share of the proceeds.

A joint tenancy creates rights of survivorship. The result is that when one owner dies the remaining owners will automatically own the whole property; remember, they've all always owned 100% of it. This means that a joint tenant cannot gift their interest in the property to anyone by their Will.

If you hold your property as tenants in common you will each have a divided share in the property. This is often an equal share, but it is also possible to hold the property in unequal shares. This is an attractive option for people purchasing a property together and contributing different amounts towards the deposit.

Under a tenancy in common each owner can deal with their share in the property separately, allowing them to gift their share to their own beneficiaries by their Will. This also opens up more opportunities for planning to protect their share of the property by using trusts in their Will, including leaving your share of the property to a PPT.

What is it?

A PPT is a means of ringfencing an interest in property. In the context of a couple who own property together, the trust would be written into both Wills. The terms of the trust would allow the surviving spouse to continue living in the property free of rent and without any interruption, usually for the rest of their lives. They are referred to as the 'life tenant'.

The trust also gives the survivor an entitlement to income. If the survivor moves out of the property for any reason and it is rented out, this would give them a regular income from renting. An income may also be produced if the property is sold for any reason; the proceeds would be invested by the trustees.

The trust will name the people who you want to inherit your share of the property eventually. So when the trust ends, usually on the second death, your chosen beneficiaries will inherit your share

Inheritance Tax Treatment (IHT)

The PPT is most efficient for protection, not necessarily for IHT planning.

If the life tenant of the PPT is your spouse or civil partner then the property is taxed as though it is passing to them directly. This means that it will qualify for the spouse exemption so there will be no IHT on the transfer of the property to the PPT, so potentially no IHT on the first to die's estate.

During the life tenant's life there will be no IHT charges.

On the life tenant's death everything in the PPT will be revalued and included in their estate for the purposes of working out their IHT liability. They will have their own IHT allowances (NRB) and the transferable NRB from the first to die to offset this.

If the property is passing from the PPT directly to the life tenant's children, stepchildren, or remoter descendants such as your grandchildren then they will also have the additional residence NRB available to them, as well as the transferable RNRB from the first spouse.

If the life tenant is not your spouse or civil partner then there is no exemption available, so IHT may be due on first death when the property passes to the PPT. The other effect is that they will not have any transferable allowances available on their death.

If the PPT ends in the life tenant's lifetime then the life tenant is treated as though they made a Potentially Exempt Transfer (PET) to the final beneficiaries, so they must survive this transfer by 7 years for it to be IHT free.