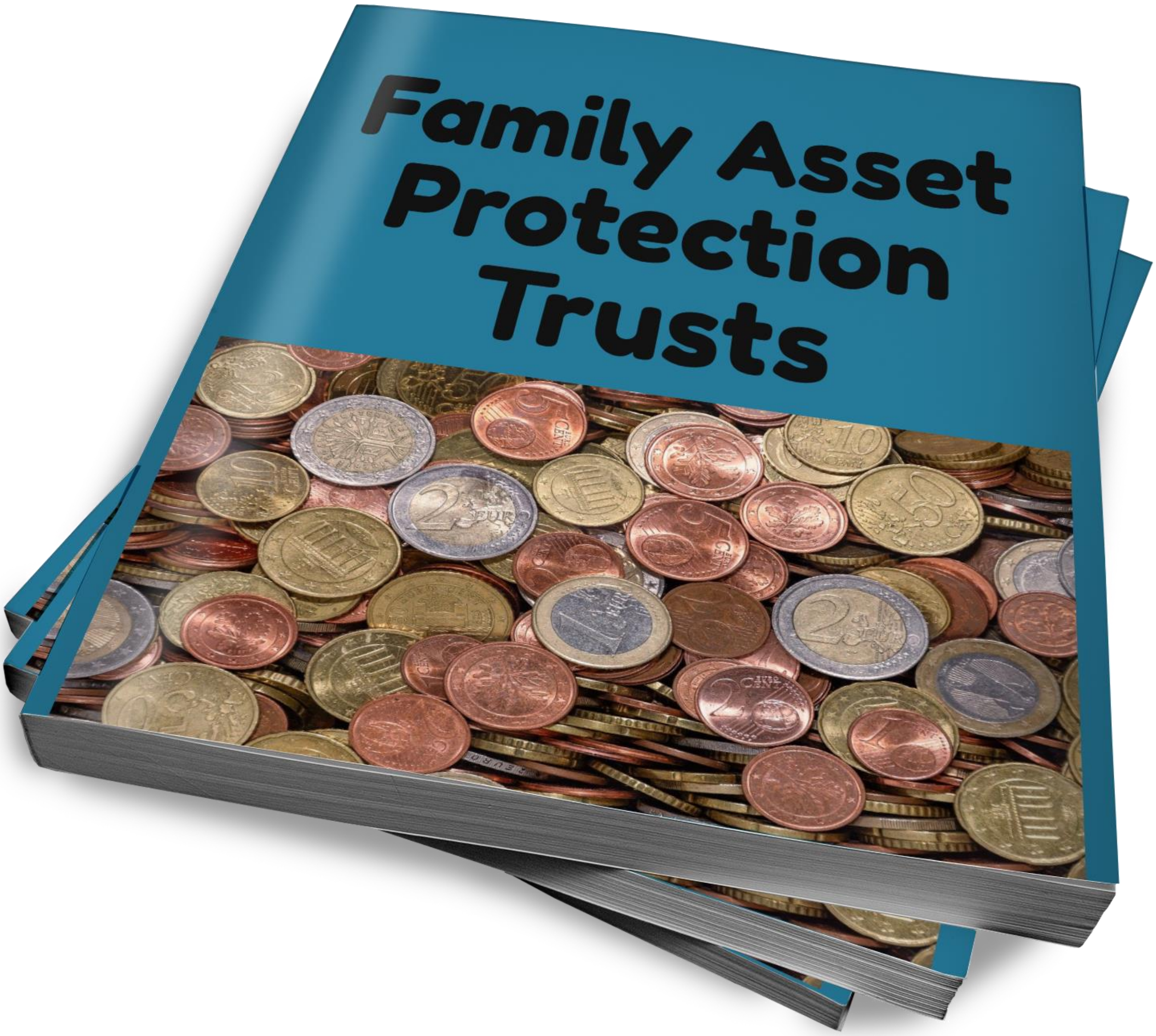

The Family Asset Protection Trust

New Approach Wills
Modern Estate Planning Solutions

The good news is that care will be provided if you required it in later life.

The bad news is that it is "means tested". If you have assets valued over £23,500, including your house and savings, then you will be expected to pay for that care yourself.

This money that was supposed to pass to your children and grand-children, the nest egg accumulated over a lifetime's hard work, investment and prudence can disappear entirely as your Council can take all your assets including your house to pay for the care? **Only the last £14,500 is protected!**

Frequently Asked Questions.

1/ What can be done?

You have four options:-

a. You could do nothing and hope for the best.

b. You could transfer your assets to your family. This may protect your assets but you lose control, your family may have to pay Capital Gains Tax on the asset, they may get divorced or go bankrupt, (possibly resulting in you losing your home) or you could all simply fall out. Also the local authority could challenge the transfer as a 'deliberate deprivation of assets.'

c. You could purchase Care Cost Insurance Plan. Premiums can be very expensive.

d. Or you could transfer your assets including your house into a Family Protection Trust. This allows you to have total control over your estate.

2/ What is a Family Asset Protection Trust?

Technically known as a Settlor Interested, Lifetime Discretionary Trust. But a good way to think of a family protection trust is to think of it is, as a safe place into which you can place your home, savings, stocks and shares, life insurance and/or any other assets.

Whilst in this safe place, you still have full use of the contents and you can add to them, sell them, replace them, borrow from them or pass them down to your family as you wish. However, a third party cannot get access to them and cannot force you to allow them access.

The reason that a trust can safeguard your assets and property effectively is that the law regards the trust itself as owned by a completely separate person to you and if the property in which you live and the investments from which you receive an income are (in the eyes of the law) owned by someone other than you, it is **very difficult** for anyone to take them from you.

After your death, the trust and its contents pass down to the beneficiaries that you have chosen to receive them and they can either carry on using the trust themselves, enjoying the same protection that you had, or they can bring it to an end and share the contents out.

The inheritance due to any unreliable beneficiaries can be protected by the Trust and be passed to them at a more appropriate time.

If you originally planned to leave everything to your surviving spouse or partner, but have children from a previous relationship or marriage that you would like to ultimately benefit, then the Trust can be used to protect their intended inheritance.

The value of the Trust won't be eroded by the cost of administering your estate (probate costs) or by the cost of residential care in later life, if needed.

When the Trust ends your Trustees will pass the assets to your beneficiaries without having to follow any complicated processes or procedures and without having to apply for a Grant of Probate, as the trustees would deal with all of this as part of the trust administration.

3/ Can't my family will deal with things after my death

Often the procedures that your family has to follow after your death are not straight forward as you might think and the process involved in applying for the Grant of Probate can be a very lengthy and time-consuming job. The cost incurred by your executors in gaining specialist help from a solicitor or bank could run into many thousands of pounds. Banks typically charge between 3% and 5% of the whole value of the estate.

4/ Is it worth it?

Placing assets into a Family Protection Trust reduces any costs in relation to administering your estate. Doing nothing will mean extra costs and additional work for your family and further costs before your death if you need long term residential care. Currently if you own assets above £23,250 and need residential care in later life you are expected to pay ALL the costs and may have to sell assets such as your home in certain circumstances. However, if you have already placed your assets in to a Family Protection Trust, while in good health and the Trust was set up for good reasons, then it is highly unlikely that they can be used toward these costs. The cost of a trust is usually less than the cost of one month in a residential care home, and much less than the cost of probate through a bank or solicitor.

5/ Who should be the trustees of my family asset protection trust?

You control the Trustees - you can appoint new Trustees and remove existing ones if you wish to do so. In most cases you will be a trustee of your own trust so you clearly remain in complete control.

6/ Can I change my mind?

Yes – since YOU control the Trust you can transfer all or some of the assets back into your name at any time. Transferring a property would entail a conveyance fee, much the same as any transfer of property.

7/ What happens if one of us dies?

Nothing normally, the Trust, and the protection it gives, simply continues as before until the second person dies. The survivor continues to retain the benefit of the Trust.

8/ What happens if one of the trustees dies?

A new Trustee is simply appointed to act in his/her place – this would of course be someone of your choosing.

9/ Do I still need to make a will and a lasting power of attorney?

Yes. Anything you put into the Trust will be distributed in accordance with your expressed wishes and normally in accordance with your Will. The Will also distributes anything you own when you die that you haven't put into Trust.

The Lasting Power of Attorney document still enables your appointed people (Attorneys) to manage what assets that you didn't put into the Trust whilst you are alive but are unable to manage yourself.

10/ Who can set up a family trust?

Any person who is mentally capable of making such decisions.

11/ What type of assets can be placed within the trust?

Commonly, clients place their house and savings within the Trust.

12/ Can I withdraw my savings if I wish?

Yes you can withdraw some or all of your savings whenever you wish.

13/ Are there any assets which cause a problem if they are placed within the trust?

Any assets which might create an immediate Capital Gains Tax charge, eg. any property that is not your principle private residence. ISA's can also be a problem but can be converted to a similar savings account.

14/ Can other assets be added later?

Yes.

15/ Is there any limit on the value of assets placed within a family protection trust

Technically no – but if a client is placing assets valued in excess of his or her available Nil Rate Band (currently £325,000) within the Trust, this would create an immediate charge to lifetime Inheritance Tax (20% on the value above the nil rate band). A husband and wife can create two trusts, each capable of holding up to £325,000 (£650,000 in total) of assets without any tax.

16/ What can be done if my / our home is worth more than the nil rate band?

We can modify the title deeds such that for example 90% of the house goes into trust. Then the majority of your home would be protected and there would be no tax charge.

17/ When is the best time to set up a family protection trust?

As soon as possible.

18/ Who would be the beneficiaries of the trust?

Just as you choose who benefits from your Will, you also decide who should benefit from the Trust. Usually these are the same people, but not always.

19/ What if one of my children has a shaky marriage?

The Trustees have the ability to withhold the funds in this situation (and similar), until they feel it is advisable for the funds to be paid out. Also if one of your children has a tendency to fritter away money the trustees can ensure he or she only receives funds when they need them for legitimate purposes.

20/ One of my children no longer keeps in touch with me and they are excluded from my will but I understand they can still make a claim and may receive a chunk of my estate, can the trust help me to prevent this?

Yes, under the Inheritance (Provision for Family and Dependents) Act 1975, children have the legal right to claim on their parent's estate, even if you have tried to exclude them in your will. A claim on your estate can cause severe delays, and the court costs can seriously diminish your estate value. The Family Protection Trust bypasses this potential problem. So long as the house / funds have been in the trust for at least six years, your trustees will only pay out to the beneficiaries of the trust. Even if you don't survive the 6 year period, the fact that the assets are in a Trust will make it much more difficult (and therefore much less likely) that a child will pursue a claim.

21/ How long does the trust last and in what circumstances does it end?

Technically the Trust lasts for 125 years (known as the perpetuity period) but it will usually be distributed by the Trustees on the death of the Settlor or the Settlor's spouse.

22/ What if I wish to sell my present home & purchase another?

If you wish to move home after placing the house in to a Family Protection Trust you can do so. The paperwork would be signed by the Trustees but there are no restrictions on you. Any surplus cash is still protected by the Trust and will simply be added to any other savings and invested by the Trustees.

23/ What if I need some of the savings from the trust?

The Trustees will transfer funds from the trust back into your name if and when this is required.

24/ What happens if one of us becomes incapacitated?

Nothing. The remaining Trustee simply continues. If your assets were not in the Trust, your family might need to go to the Court for a Guardianship Order which is a difficult and costly business.

25/ Is the trust guaranteed to work for care home fees?

As the law stands, and provided you can satisfy the qualifying rules at the time you set up the Trust then there should be no problem. You are always assured of all the other benefits of setting up the Trust and could save many times the cost of the Trust in Probate fees and other costs alone, depending upon the size and complexity of your estate.

26/ Why can't we simply give our house to our children?

Giving your house to your children may be interpreted as "deliberate deprivation of assets" or a "gift with reservation of benefit" (GROB) particularly if you carry on living there and do not pay market rate rent. Local authorities can take the property back from the recipients, if they can show that one of the objectives of the transfer of ownership was to avoid care fees, (deliberate depravation of assets) or avoid inheritance tax.

Also you should think very carefully before giving the whole or part of your property away to children or other family members in your lifetime, because you could become homeless should your children divorce or get into debt or become bankrupt.

27/ Is the plan useful for inheritance tax planning?

This type of Trust will not avoid inheritance tax being charged on the trust contents.

28/ Who gets my estate when I die?

Usually whoever you have left it to in your Will, will receive all of your estate, subject to the conditions in the will and your trustees are also guided by the reasons why you set up the trust. Your trustees will make checks to ensure your wishes are carried out. This may involve holding on to the son/daughters inheritance until the situation resolves itself.

29/ Can I put my investment property into the trust?

If the property is not your Principal Private Residence then you would most likely suffer a capital gains tax charge when putting the property into the trust.

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