

ASSET PROTECTION TRUSTS

An Asset Protection Trust is a means to protect the value of an asset. Typically, a property (for example your home) is put into the trust. The property is given to trustees so that it will no longer belong to you but will instead belong to those trustees. The trustees should be people who, as the name suggests, you trust! They are obliged to hold the property subject to the trust and so cannot use it to benefit themselves. There must be at least two trustees and no more than four; you can be one of the trustees and it is recommended that you are.

Under the terms of the trust you are given the right to live in the property for your lifetime or for as long as you may wish. If you can no longer live in the property, the trustees can sell it and invest the proceeds. The income from that investment is then paid to you. Ultimately, when the trust is ended, the property can be sold, and the proceeds divided according to your instructions (usually amongst your children) as set out in the trust deed.

Whilst you live in the property it cannot be sold by the trustees without your specific consent and you are given the right which cannot be taken away from you to occupy the property for as long as you wish. You are also given the right to ask the trustees to sell the existing property and purchase another for you, which will be held on the same trusts. Whilst you live in the property you will be expected to continue to pay all outgoings on it and keep it in good repair and condition.

This type of arrangement is however risky, and you should be aware of the following:

1. In the event of you requiring long-term care to be provided by a Local authority the Local Authority may challenge the effectiveness of the Asset Protection Trust under the “deprivation of assets” rules. The challenge may well be rebutted (it is recommended that legal advice should be sought). If, however, the challenge is successful or the trustees decide not to defend it, then the trust arrangement will be set aside, and your property could be sold to pay fees.
2. You will not be able to bring the Asset Protection Trust to an end once your property has been placed in trust without the consent of your co-trustees.
3. Local Authorities only provide accommodation at their “standard rate” which may fall short of the standard of care you would wish to have. The Asset Protection Trust fund could be used to “top up” fees to a higher standard of care, but only with the consent of your co-trustees.
4. The existence of the Asset Protection Trust may impede or obstruct future transactions on the property, e.g. equity release.
5. The Asset Protection Trust does not constitute Inheritance Tax planning and the property remains part of the estate of the person(s) who created the trust for the purposes of that tax.
6. If you are a trustee of the Asset Protection Trust and lose mental capacity it may be necessary to apply to the Court of Protection for your removal. The issue of your retirement as a trustee should be addressed if mental capacity is felt to be deteriorating.

7. It is beneficial to update the Land Registry so that the trustees are shown as the owners of the property. If the property is not yet registered, we recommend that this be done.

How can GL Law help you?

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

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