Planned Succession
Personal Estate & Business Succession Planning

The Society of Will Writers

**Asset Protection Trusts**

Asset Protection Trusts are used to 'ring fence' assets and provide peace of mind that the assets are protected for your chosen beneficiaries. These Trusts are lifetime settlements used to provide for a surviving spouse, civil partner, co-habitee and future generations etc and to protect hard earned assets against the possible claims of as yet unknown third parties by splitting the beneficial enjoyment of assets from their legal ownership. The beneficiaries are the beneficial owners of equitable interests in the Trust assets, but the legal title to those assets is held by the Trustees, who are typically children.

Placing assets within a Trust can, in some circumstances, protect them from 'sideways disinheritance', claims upon the divorce or bankruptcy of a beneficiary and can save Inheritance Tax (IHT) on a beneficiary's estate by retaining assets within the Trust and passing them directly to future generations, although in your case the point about IHT does not apply. Moreover, probate fees can be mitigated or avoided as the assets within the Trust are not part of the estate for distribution or probate purposes. This also means that they are protected from any claim under the Inheritance Family Provisions legislation. A couple, say, can transfer the family home into a Trust and continue to live there for the rest of their lives. The death of the first spouse etc to die will not affect the right of the survivor to occupy the home. The equity of a property which is not subject to a mortgage can be placed within a Trust and secured by a restriction on the land registry title without needing the consent of the lender.

It is not just the family home which can be put into the Trust. Other assets such as building society accounts, bank accounts and equities can be placed into the Trust for the use of the settlor etc during their lifetimes and for other beneficiaries after the death of the survivor(s). Income and capital can be paid to the survivor(s) for their welfare at the Trustees' discretion.

Taxation - The purpose of the Trust is not to mitigate or avoid IHT but to protect and preserve assets. It is IHT neutral in this respect and does not remove the value of the assets from the IHT calculation if the settlors continue to receive a benefit from the assets. The principal residence exemption for Capital Gains Tax will continue to apply to a property held in Trust as long as the settlors continue to occupy it as their principal residence.

Care fees - Clients often ask whether Asset Protection Trusts can protect against care home fees as the fear is that the family home will be taken from them and sold so that nothing is left for future generations. This is a complicated topic and involves consideration of the concept of 'deliberate deprivation'. Any act carried out whereby assets are transferred, sold or used up deliberately to diminish the settlor's means and thus to avoid paying care fees can be considered as deliberate deprivation. If assets are transferred into an Asset Protection Trust whilst care fees are not even contemplated and when the clients are still healthy and not considering going into care, the assets may be excluded from a local authority assessment for care fees. A full assessment of the settlors' circumstances will be required to provide full and accurate advice in this respect. You should however be aware that regardless of the Trust's provisions, it is always open for a creditor or local authority to challenge its provisions. That said, the Trustees would still be free to use the Trust assets to pay for or top any care requirements.

Placing your home in an Asset Protection Trust is an irrevocable step and not without its disadvantages, not least of which is the cost. In addition, it would be difficult if not impossible to mortgage the property or take an equity release loan should you later need it; not for any legal reason, but because mortgage lenders and equity release companies simply don't like them.

**Planned Succession Limited - Suite 6, 43 Bedford Street, London WC2E 9HA.**
**Switchboard : - 0203 303 0963**
**Email: - info@planned-succession.com**
**Web: - www.planned-succession.com**