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... also known as an interest in possession trust.

A Life Interest Trust is used for preserving assets for the next generation whilst at the same time providing a benefit for the current generation.

What is a life interest trust?

It is a trust that is established to provide a beneficiary with the right to receive the income (after expenses) from the trust. The beneficiary is known as the life tenant. This right is usually given for their lifetime. On their death the trust fund is passed to the other named beneficiaries, known as the 'residuary beneficiaries'.

The life tenant does not have any right to the capital, unless expressly given in the trust deed. If there is a property held in the trust the life tenant is entitled to either receive the rental income from it or to live in the property if they wish.

A life interest trust can be established either in your lifetime or by your Will.

Why would this type of trust be used?

Here are a few typical examples:

- Unsure as to what the future may hold? Concerns that your spouse could remarry after your death and their new family would inherit your assets.
- Second marriages and step-children. This type of trust allows you to provide for your new spouse but ultimately passes your assets to your own children.
- Concerns regarding care fees in the future. Obtaining legal advice at the right time can sometimes enable you to keep the family home rather than selling it to fund your care.
- Keeping the family business in the family. Shares could be held in the trust.

What assets could the trust hold?

The trust can hold most assets but typically would hold cash, investments or property.

If establishing a trust in your lifetime cash is often transferred due to tax considerations.

If done by a Will, it is typically your entire estate or your share of the family home. If a share of the family home is held within the trust, this does not prevent the life tenant moving home in the future but the trustees' permission will be needed.

Who should be a trustee?

Care should always be given when deciding who to appoint. It is often the surviving spouse and the children. However, if there is any family conflict or potential for conflict, it is our advice to appoint independent trustees, who could be a friend, family member or a professional trustee.

We recommend appointing a maximum of four and a minimum of two trustees.

Tax Treatment

The trustees are responsible for declaring and paying income tax and capital gains tax.

The income received belongs to the life tenant and is taxed at their personal income tax rate. For capital gains tax, the trust is taxed. The trust will have an annual allowance to offset against the gain.

If the life tenant lives in the trust property as their principal private residence and that property is sold, it is not subject to capital gains tax.

For inheritance tax purposes, the trust will be treated differently depending on whether it was established in your lifetime or by your Will.

If created in your lifetime, inheritance tax may be due, depending on the value of the trust assets:

- When assets are put into the trust
- On each ten year anniversary of the Trust
- When assets are transferred out

If created by your Will and it is an immediate post-death trust:

- There is no tax to pay when established if the life tenant is the surviving spouse as the spouse exemption is available. Otherwise inheritance tax is payable.
- The value of the trust asset will be treated as part of the life tenant's estate. If the combined trust and estate value is over the available nil rate band (this is the amount of the estate that is taxed at zero percent) inheritance tax will be payable.

How can Greenwoods GRM help?

The Private Client Team at Greenwoods GRM will be able to advise you as to whether this trust is suitable for your circumstances and will explain fully all of the options available to you.

We are experienced in working in the role of a professional trustee or working behind the scenes advising the trustees as and when necessary.

Contact +44 (0)1733 887665 and ask to speak to a member of our Private Client Team.

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