

What is a life interest in a Will?

Making a gift in your Will to your spouse/partner of a life interest in your half share of your property is a way of ensuring that the surviving spouse/partner can live at the property, (after the first death) and, if they want to sell the property and buy another property for themselves using the net sale proceeds of the sale, they can do so.

This can be done even if there is a mortgage on the property. The life interest can be extended to include having money invested for them to receive the income. If, for example, after the first death the property is sold and the spouse/partner rents another property or goes into a care/nursing home, the half share in the life interest trust will be invested and they will receive the income for the rest of their life, but not have access to the capital. This means no other party, such as the local authority, can get at the capital.

If you have the property in your sole name or you own more than one half share, you can still leave a life interest in your property under your Will on the same terms as described above.

The benefit of leaving a life interest in your Will is that if the survivor goes into a care home, changes their Will or remarries your half share of the property is "ring fenced" and cannot be "taken" by anyone else. On the death of the survivor your half share in trust passes to your beneficiaries, who, in most cases, will be your children. Your spouse/partner is also protected in this way as the beneficiaries (maybe the children) will not receive their half share as it is held in trust until the second death.

Leaving a life interest in your property in your Will may also be a good idea if you have children from a previous relationship/marriage, as it safeguards your children's' inheritance in case your present spouse/partner changes their Will or dies without having made a Will, as step children will not inherit if their step parent has no valid Will and they die intestate.

In order for your half share of the property to pass into the life interest trust on the first death, the property must be held by you as owners in common. This means that you each own separate shares and your respective shares will pass to the beneficiaries under your Wills and not to each other by survivorship.

A simple notice of severance can be signed by you severing the joint ownership of the property so that it is held as owners in common.

If your spouse/partner has died within the last two years, it may be possible to still do a life interest trust and this can be discussed in more detail if necessary.

There may be tax implications in making a life interest trust and these can be discussed during your appointment.

If you would like to have more information about a life interest or wish to make an appointment please contact Katherine Oakes of this firm.