IWC

*"You take care of your family all your life,
don't leave them in a mess when you're not there"*

Specialising in Probate, Wills, LPA's & Estate Planning. If you need to speak to us call us on 020 8150 2010.

Family Asset Protection Trust
Protecting your Home from Long Term Care Fees

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What is a Trust?

The concept of a Trust can seem alien to our normal way of treating assets-how can you give away an asset and still control its use? In fact most charities are run by trusts, as are pensions and hospitals; trusts are an everyday part of our life. Trusts also enjoy a special status in law and assets placed within them are protected for the exclusive enjoyment or use of the beneficiaries.

A trust is usually made up of four main components. Firstly the asset is being held within the trust; this can be a property, land, money or a combination of all three. Secondly all trusts must have at least one trustee and often a maximum of four; a trustee is appointed to take overall control of the asset held in trust and makes all the decisions, within the terms of the trust document, as to its use. Next there are usually beneficiaries of a trust; these can be specifically named people or groups of certain classes of people or even animals. Finally the trust document itself; this sets out the parameters under which the terms of the trust must be operated.

A trust can be created by way of a Will and therefore activated upon death. Otherwise assets are placed into a trust during the settlor's lifetime (inter vivos)

TERMINOLOGY

Settlor	Person setting up the trust
Trustee	Person who has control of the assets
Beneficiary	Person or group entitled to benefit from the trust assets
Settlement	Another name for a trust

Long Term Care Costs

You may never have thought about Long Term Care Costs before or you may already know of someone who has been forced to sell the family home in order to pay for Care Fees. It may also be something you don't want to think about, especially if you are in good health, but the statistics regarding long-term care make for sombre reading:

- 1 in 3 women and 1 in 4 men currently go into some sort of care
- With an ageing population , these figures are likely to rise in the future
- Average care home fees range from between £26,000 to £50,000 per year
- 70,000 people were forced to sell their homes in 2007 to pay for care costs (source; The Guardian, 17th November 2007)
- Currently, to have your care fees paid by the state, you must have assets worth less than £13,500 (2008/2009) and that includes the value of your house.

With an ageing population this puts additional strains on the social funds available to support any care funding; inevitably this means that more of us will have to fund our own long-term care in our old age.

How Care Funding Works

Often when someone becomes too ill to care for themselves in their own home and there are no family members who can look after them, the decision is made to look for a suitable Care Home that will provide the level of care they need. This is either residential care or 24 hour nursing care if they need a higher level of care. Occasionally it is possible with live-in help to remain in your own home, but this type of care is usually even more expensive to provide

The first thing that will happen when you become too ill to care for yourself is a visit from the local social services department, who will carry out an assessment of your needs and help in deciding the best care provision for you. They will also be looking to assess your financial needs to decide who will have to pay for your care fees.

They will total up everything you own, all your financial assets, your income and the present value of your house (apart from some assets that may be disregarded, see Disregarded Assets below). Half of any assets that you jointly own will also become part of the assessment and if you own in excess of £22,250 at current figures (2008/2009) you will not receive any financial assistance, however, if your assets total less than £13,500 your care fees will be paid in full.

Once you have been assessed, your local authority may suggest that you move into a care home or nursing home, which you can choose yourself. Typical fees charged by care homes can differ across the country but are between £650 and £1,000 per week, which is £52,000 a year for nursing homes these can be anything up to £1500 a week although the local authority may make a contribution for the nursing charges.

If you are assessed to pay your own fees and your income or capital is not sufficient, you will be expected to sell your house to pay for the fees. If you refuse to sell your home the council will place a restriction on the property so that when it is eventually sold they can recover their fees old.

Some Basic Rules

Once a person is assessed as needing care the local council has a duty to provide that care whether or not the care can be paid for. This is a statutory obligation. If you are married or living as a couple your income would have to be used to pay for your care. You would also be assessed as owning half of all money held jointly with your partner and all money in your sole name.

Government guide lines allow councils to recover assets that have been deliberately given away in order to avoid paying for care fees. However the guide lines also state that it would be "unreasonable" to claim deliberate deprivation if the asset was disposed of more than 6 months prior to needing care or if the person was unable to foresee the need of care. If assets are held within a trust arrangement it may still be possible for the council to include these in the assessment-unless the trust is a Discretionary Trust. The government guidelines state that: *"where payments are made wholly at the discretion of the trustees and there is no absolute entitlement to capital or income, the local authority only take into account payments which are actually made."*- LAC (99) CRAG section 10. 020

Disregarded Assets

Your home will not become part of your assessment as long as one of the following people remains living in it;

a. Your husband, wife or partner

b. A close relative who is under 18 or over 60

c. A close relative who is incapacitated

d. A long term carer

In all other situations your house will be included in the assessment of your available funds.

Other assets that may be discharged are investments that have a life insurance element or an annuity. Business assets and personal possessions such as paintings or antiques are also counted as well as any assets held in a Trust.

Deprivation of Assets

There is much uncertainty over the rules concerning deliberate deprivation, so much so that often the councils are unsure how to apply them. If the local authority believes the person has deprived themselves of capital to obtain a benefit they would not otherwise be entitled to, they can treat the person as still owning the capital.

Put simply if the council can prove that a person has given assets away or otherwise disposed of them in order to avoid using them to pay for their care fees and the assets were disposed of within 6 months of needing care, then the assessment will include the value of those assets.

There may of course be other reasons why a person would want to transfer the ownership of their property to their children, or to a trust, such as to save on probate fees after their death.

FIVE SOLUTIONS TO THE PROBLEM

1. Hope you never need Long-Term Care
2. Give assets to other family members (and hope they don't divorce or go bankrupt)
3. Wait until care is needed and buy an Immediate Care Plan (an expensive option)
4. Use a flexible Lifetime Interest Trust in your Will and protect half your assets
5. Set up a Family Asset Protection Trust and protect your home

Family Asset Protection Trust

How to protect my Home from being used to pay for care fees

The FAPT is designed to protect your property against the ravages of long-term care fees but is equally effective at protecting against future remarriage and probate costs; in fact you could save more than the cost of setting up the trust from reduced probate fees alone.

It is important to remember that this type of planning should be done early – and well before there is any foreseeable need for care.

How the Trust works

Consider the Trust as a safety deposit box in which you place your house. Your trustees hold the keys but they only take their instructions from you, the settlor. No one else can access the deposit box without your authority, not even the local authority. In fact as far as they are concerned you no longer own your house.

The idea of the trust is to keep your home safely from care fees assessment, future probate costs, problems if you become incapacitated or unreliable children, but not away from you.

Appointing Trustees

There are normally three trustees. One is you (the settlor), the second is your spouse or an adult child and the third is always a SWW Trust Corp. The SWW Trust Corp administers the trust subject to the instructions of the settlor (namely you, the person who sets up the trust and who directs the trustees in all their actions). As Settlor, you retain control of the trust during your lifetime by appointing trustees of your choice and having the power to "hire or fire "them at any time.

As Settlor, you will continue to occupy the property. If you wish to move house this is never a problem as you simply sell the house in the normal way by directing the trustees in the sale and then again with the purchase of the new property. You can also still obtain a mortgage or equity release if needed.

After your death

After your death, the house held within the trust can be passed directly to your beneficiaries or sold and the proceeds paid in accordance with your Will and without the need to wait for probate.

Summary of Trust Benefits

- Probate for your house will not be needed, which could save thousands of pounds in probate fees
- Property can be passed on after your death a lot quicker
- SWW Trust Corporation is on hand to fight your corner if the local authority decides to challenge the trust
- Protect your joint assets from the survivor remarrying
- Protection from leaving your home to unreliable children
- Avoid losing your home to pay Care Fee charges

How to set up a Family Asset Protection Trust?

When you set up a Family Asset Protection Trust the house will usually be the main asset put into the trust and this is simply transferred to the trustees with the signing of various documents. The Settlor will always have control over the house and this will be secured by the way of a document called a 'Lease for Life'. They can sell the house and move to another if they wish. There are literally no restrictions and the Settlor can act in exactly the same way as if he still fully owned the property.

Remember that it is important to set the trust up early enough or at least at a time when it is not foreseeable that care will be needed. If the Settlor goes into care within six months of assets going into the trust, the trust could fail to provide protection against care costs, but would still work for saving probate fees. After the six months period everything in the trust is protected.

Setting up the Trust – The Process

1. Your details and the deeds of the property to go into the trust are collected by your IWC Consultant, along with the trust fee and a report in order to complete a money laundering check.
2. The SWW Trust Corporation is then instructed to prepare the paper work required including the Trust Deed.
3. Property transfer papers are also prepared.
4. The consultant from IWC returns to assist you and the trustees with signing the documents and the transfer papers.
5. The property is then transferred into the trust and a copy of the trust documents along with the property title papers are sent to you.

What about Cash Assets?

If you have savings or investments worth more than the £22,250 (the upper limit for paying care fees), then we will generally advise that any savings over this amount be invested into specific types of investments, investments that are disregarded from the care fees assessment. If you need advice with regards to this then please let your IWC consultant know and we will arrange for a Financial Advisor to assist.

The FAPT and Tax

It is important to remember the Family Asset Protection Trust is not a tax planning tool and assets placed in the trust will not fall outside your estate for inheritance tax purposes. This is because you are named as a beneficiary of the trust and as such have what is known as a 'reservation of benefit'. If you give an asset away (to a trust) but continue to use the asset or receive a benefit from it, it remains as part of your estate for inheritance tax purposes.

Assets that are placed in the FAPT are known as 'chargeable lifetime transfers'. The rules in the inheritance Tax Act 1984 and the Finance Act 2006 state that if you transfer more than the inheritance tax threshold (£325,000 09/10) into the FAPT, an entry of 20% must be paid on the excess. We are therefore careful not to transfer more than this amount in any seven-year period. We must also take into consideration any other trusts you may have created in the previous seven years.

Your FAPT will usually be registered with Nottingham Trust Office. They will not normally issue a tax return each year, as they will be informed that no income will be generated. Only income generated by the Trust is reportable and, unless you rent out your property, this is normally a 'Nil' return.

The trust will be assessed for IHT on the tenth anniversary. If the assets in the trust were to exceed the prevailing inheritance tax threshold at that point a periodic charge would be applied. We will set up the trusts so that the Trustees can avoid this. You continue to get principle private residence relief for Capital Gains Tax.

Your questions answered

Q. Can I change my mind?

A. Since you are in control of the trust you can close the trust and transfer the assets back into your name at any time.

Q. What if I still have a mortgage on my property?

A. The consent from the lender must be obtained first and many building societies do not have a problem with this. However there is no guarantee that your lender will approve, even though there is no disadvantage to the lender in the property being transferred

Q. Can I take my property out of the trust at any time?

A. Yes. The Settlor has full control of what goes in and what comes out of the trust, with no questions asked.

Q. What happens after the first person of a couple dies?

A. The trust remains in place and continues to protect the survivor's assets, even if the survivor decides to remarry.

Q. Can I set up a trust if I am single or widowed?

A. This trust is available to anyone, whether you are single, married, widowed or living with a partner, provided that you have not been allocated a social worker or had a local authority assessment of means

Q. What happens if I need to go into care within six months of setting up the trust?

A. As long as you let us know in good time we can advise you how you can still avoid care fees. However the trust will fail if a social worker is appointed to you within the six months after assets are transferred into the trust.

Q. What about ongoing fees for the trust?

A. There are no ongoing trust fees; the only charges in the future would be the normal fees for selling the house.

Q. What happens if one of the trustees dies?

A. The remaining trustees can easily appoint another trustee if needed.

Q. Do I still need to make a Will?

A. Yes, you will need to make a simple Will to cover any assets left in your estate. The trustees will also use your Will as guidance for the distribution of you trust assets.

Q. Who are the beneficiaries of the trust?

A. The beneficiaries are yourself along with whoever you choose and these can be changed at any time you wish.

Q. Is the trust guaranteed to work for care home fees?

A. As the law stands at the moment; if you can satisfy the two qualifying rules at the time you setup the trust then there should be no problem. However what we cannot guarantee is any future changes in the law that might affect the qualification rules.

Q. What if I want to sell my home and buy another?

A. You can still sell your house at any time and purchase a new one. If you choose to downsize to a property of a similar value, the cash that has been released can remain protected within the trust.

Q. What can I protect in the FAPT?

A. You can protect your home (or your share of it) within the FAPT. An Investment property can be protected but may trigger a charge for Capital Gains Tax if transferred into the trust. You would not normally put any other assets into the trust as most investments can be restructured outside the trust to ensure the local authorities disregard them.

Q. Is there a limit on how much I can protect in the FAPT?

A. You are able to place assets of any value into trust. However, if assets in excess of the prevailing inheritance tax threshold (£325,000 09/10) are placed into a trust in any seven year period, an extra tax of 20% is payable on the excess. To avoid this, most clients choose to limit the amounts that go into the trusts in any seven-year period.

Q. Can assets be added at a later stage?

A. Yes. You can add to your trust as the threshold rises or the seven-year limit expires. Care should be taken if your health deteriorates. Any assets should be added at least six months prior to needing long-term care, otherwise this may constitute a deliberate deprivation of assets.

Q. When should I set up a FAPT?

A. It is advisable to put this protection in place as soon as possible. None of us know when we may fall ill or have an accident. As the Local Authority has the power to review the circumstances in which an FAPT was set up, this is best arranged while you are in good health, living independently and are not anticipating that you will enter care. Local Authorities can review your medical records and so any pre-existing medical conditions or comments made with a social worker or carer could become relevant at a later date.

Q. My spouse is in care. Can I still set up a FAPT?

A. Yes. But you can only protect your assets or your share of them. There are specific rules relating to the matrimonial home and the income of the spouse in care. If your spouse is in care and you remain in the matrimonial home, then the value of this should be disregarded. Half of your spouse's income should also be disregarded for assessment purposes.

Q. I have limited savings. Can I release equity in the future?

A. Yes. As with a standard mortgage, the equity Release Company will have a first charge on the property. The Trust then has a special type of second charge that works in conjunction with your Equity Release scheme.

Q. Does the FAPT affect my house insurance

A. House insurance covers the current occupier of the property regardless of tenant or owner. It is important however to notify them of the change so that the policy will not be invalidated

The contents of this brochure are provided for information only and are based upon our understanding of the relevant legislation at the time of printing. It cannot be relied upon to be complete and does not constitute advice. You will be given advice, tailored to your own circumstances, once we have discussed them with you fully.

You are advised not to set up complex trusts or attempt to avoid paying care fees using other methods without seeking professional legal advice.

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"Don't put off 'till tomorrow what could be done today!"

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