

Why not use a Will?

Wills cannot always govern all of your assets.

As an example, if you own your home with your spouse, there is a good chance you will own it as 'joint tenants'. This means that, whatever you put in your Will, your share in your home is going to go to your spouse if you die before them. But what if you want it to go to your children from a previous marriage?

Equally, it is difficult to predict what will happen once one of you has died. The survivor can change their Will after the first death, and their circumstances may change. In these cases what was agreed as a joint decision may be changed by the survivor, against the wishes of the other person.

Wills can also be challenged after a person has died by someone who feels they are not getting their fair share of the estate. You cannot prevent someone from challenging your Will after you have died, but you can dispose of assets (e.g. your home) to move them outside of your estate, so that any challenge will not apply to those assets.

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The information contained within this factsheet is accurate as the law stands currently. It cannot be guaranteed that any future changes in the law might not affect the efficacy of the Trust. It can also not be taken to be an exhaustive summary of the subject and must be read in conjunction with informed, specialist legal advice.

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Will Making & Estate
Management

ASSET PROTECTION TRUST

FACTSHEET



What is an Asset

Protection Trust (APT)?

An APT is set up by you, for your benefit, whilst you are living, and for the benefit of your chosen beneficiaries after your death.

A good way to think about it is as a safe with a padlock and key into which you put assets, with your Trustees as the only persons with a key. And you might be able to be your own Trustees.

Your Trustees will only release assets from the Trust in accordance with the rules you impose in the Trust Deed, and only the persons you name as beneficiaries can receive anything from the Trust.

By doing this it should ensure that your wealth passes to the people you want to benefit after your death.



Advantages of an APT



1) Adult children who acquire a potential interest in your house, as beneficiaries of an APT, may agree to help with the future maintenance and running costs of the property.

2) You may wish everything to pass to your spouse or partner, but if you have children from a previous marriage or relationship this could lead to your children being disinherited. The APT protects the children.

3) If you have a child with a disability who would find it difficult, if not impossible, to handle an inheritance. The APT means that their inheritance can remain in the Trust, with the Trustees managing this for them, and hopefully the child will also not lose any means tested benefit they are receiving.

4) You may have a child who is unhappily married. Without the protection of the Trust, should the marriage break down after your death, your child's inheritance could have to be shared with their soon-to-be ex-spouse.

5) If you have a child who is an undischarged bankrupt, (or who becomes bankrupt in the future), or has a problem with either alcohol or drugs – their inheritance can be held within the Trust to protect them and it.

6) The APT can reduce the need for Probate having to be granted on your death, thus saving the family legal costs. The Trustees will pass the assets in the Trust to your beneficiaries, making the whole process quicker and cheaper.

7) Assets in an APT may be protected if you have to go into a nursing home – but you must take specialist and subjective advice on this.

8) If assets are put into an APT this may help protect them against a claim on your death under the Inheritance (Provision for Family and Dependents) Act 1975. Under this Act the Courts can overturn the terms of even a properly drafted Will, if the circumstances prevailing at the time of your death justify intervention by the Court. By putting your house into trust, after six years the house will fall out of the Court's reckoning under this Act.

Disadvantages of an APT

APTs are not for everyone. It might be that your particular family situation or financial situation is not suited to an APT. The best way to find out is to take advice.

Fidler & Pepper Solicitors have been around since 1888, and have a specialist department dealing with Trusts, Wills, Estate Planning, Tax, and Probate work. We also specialise with issues relating to mental capacity and care homes, and even run training courses for local care homes and their staff.