



WHAT ARE THE RISKS OF BASIC MIRROR WILLS?

Most couples in a committed relationship have a deep bond of love, friendship and trust. When the issue of what will happen when they have both passed away is raised in a will meeting, I have yet to meet a couple who do not trust the survivor of them to follow their wishes and ensure that the children they share, the children of an earlier marriage or other cherished loved ones are taken care of in the way they would have expected by their spouse. Yet it continues to be that one of the saddest things that I see in my practice is disappointed family members, already grieving, contemplating the loss of the family's wealth or the family home, and often to virtual strangers.

Unintentional disinheritance of your own children is unfortunately common, when the survivor enters a new relationship or remarries, marriage automatically invalidates any existing will. Your children, or other chosen beneficiaries, would be disinherited in favour of the new spouse/civil partner without any positive action to do so on the part of the survivor. Sadly as this is an operation of law, legal recourse is often unavailable in this scenario.



I would estimate that more than 90% of people I see trust both themselves, and their spouse, to respect the wishes of the other if they are the second to die.



In my practice probably less than 10% of step-parents that I see who make a later will, after they have been widowed, include their step-children. The repercussions of this are devastating, and the disappointed children rarely recover completely from the loss of what they see as a birthright.

Perhaps the relationship with their step-parent has deteriorated since the mutual loved one has passed, or the step-parent has remarried or is otherwise torn in their loyalties. The more time that passes, the more likely that the promises they made to their (now departed) spouse are sadly forgotten.

Finally, issues with capacity can also change a person's loyalties and make these people vulnerable to suggestion. Influence by overbearing family members, or even new friends met later in life, are an issue increasingly seen. Often changes to wills are not discovered until after a vulnerable person has passed away, and the only option is to challenge through the courts - which is always a very difficult thing to do. As mentioned above, the statutory rule that marriage automatically revokes a will, and changes the distribution of your estate without the person having to make a new will means that predatory marriages (where an opportunist befriends and secretly marries a person with fluctuating capacity) are also becoming increasingly common.

What can you do?

You can put a trust in your will. Trusts are very commonly used but are often misunderstood. But I believe anyone who has significant assets, especially within a blended family, should seriously consider having a trust put in their will to ensure that their money and property do not end up in the wrong place.

The most simple trust is a life interest trust. You ensure that the assets you wish to include are separate (as jointly owned assets do not pass under your will) and simply leave your property, or whole estate, to the survivor of you for the rest of their lives. When that person dies the assets then pass in accordance with each individual will. The amount of heartache that could be saved by this relatively easy exercise is immeasurable. The survivor would be able to spend their own money, of course, and enjoy any trust property or income generated by the trust as a right for the rest of their lives.

A discretionary trust is a more flexible type of trust, given that no person has any actual right to any assets or income. You would include all persons who might benefit and write a 'Letter of Wishes' to be kept alongside, stating whom you see as benefiting, and this can be updated as your life changes. This is useful if a beneficiary is in a difficult situation, such as in the process of the divorce, unable to handle money well or if they are in receipt of any means-tested benefits.

If the collective value of your estates exceeds the limit for the residence nil-rate band (the extra £140k tax relief introduced several years ago), then the use of a discretionary trust in your will can divert assets away from the survivor, so that their estate would not exceed the £2 million limit that would enable it to qualify for the full relief.

Imagine Mr Patrick Right and Mrs Ellen Right

They have two sons, Bill and Ben, a property worth **£400k** owned as joint tenants, a joint bank account of **£20k**, investments in his sole name of **£150k** and in her sole name of **£160k**.

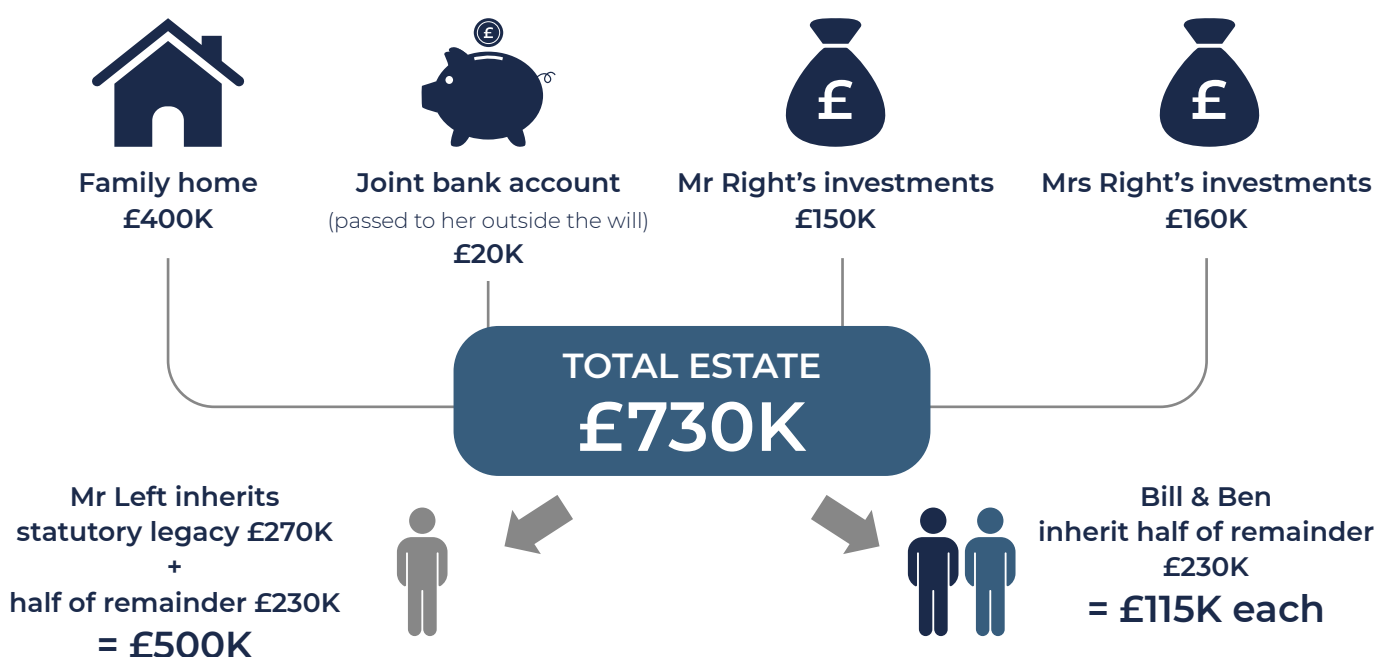


Mr and Mrs Right went to see a wills and probate specialist in 2016. Mr Right then, unfortunately, passed away after a short illness. After a few years Mrs Right meets Mr Left and they decide to get married, but keep their finances separate. Her will made in 2016 was automatically revoked when she married Mr Left. Mr Left does not have a close relationship with Bill or Ben but has a cherished niece, Sally.

Here are the different scenarios that would play out, dictated by the decisions made in their will meeting in 2016...

Absolute gift to spouse

After meeting with the wills specialist, Mr and Mrs Right understood the benefits of a trust in their circumstances but they were unhappy at the suggestion of an independent trustee to protect the interests of all the beneficiaries. They felt as though the survivor would be answerable to a third-party, and that the existence of the trust would potentially cause extra expense and unnecessary complication. They decided to benefit one another, and then the children equally on the second death. Therefore, when Mr Right died he left his whole estate to his wife. Tragically Mrs Ellen Left (formerly Right) died in an accident shortly after her re-marriage and did not have a chance to write a new will. As Mrs Left's new marriage revoked her will made in 2016 her estate does not pass to her children, as she would have perhaps wanted, but now passes under the intestacy rules. Her estate is as follows:

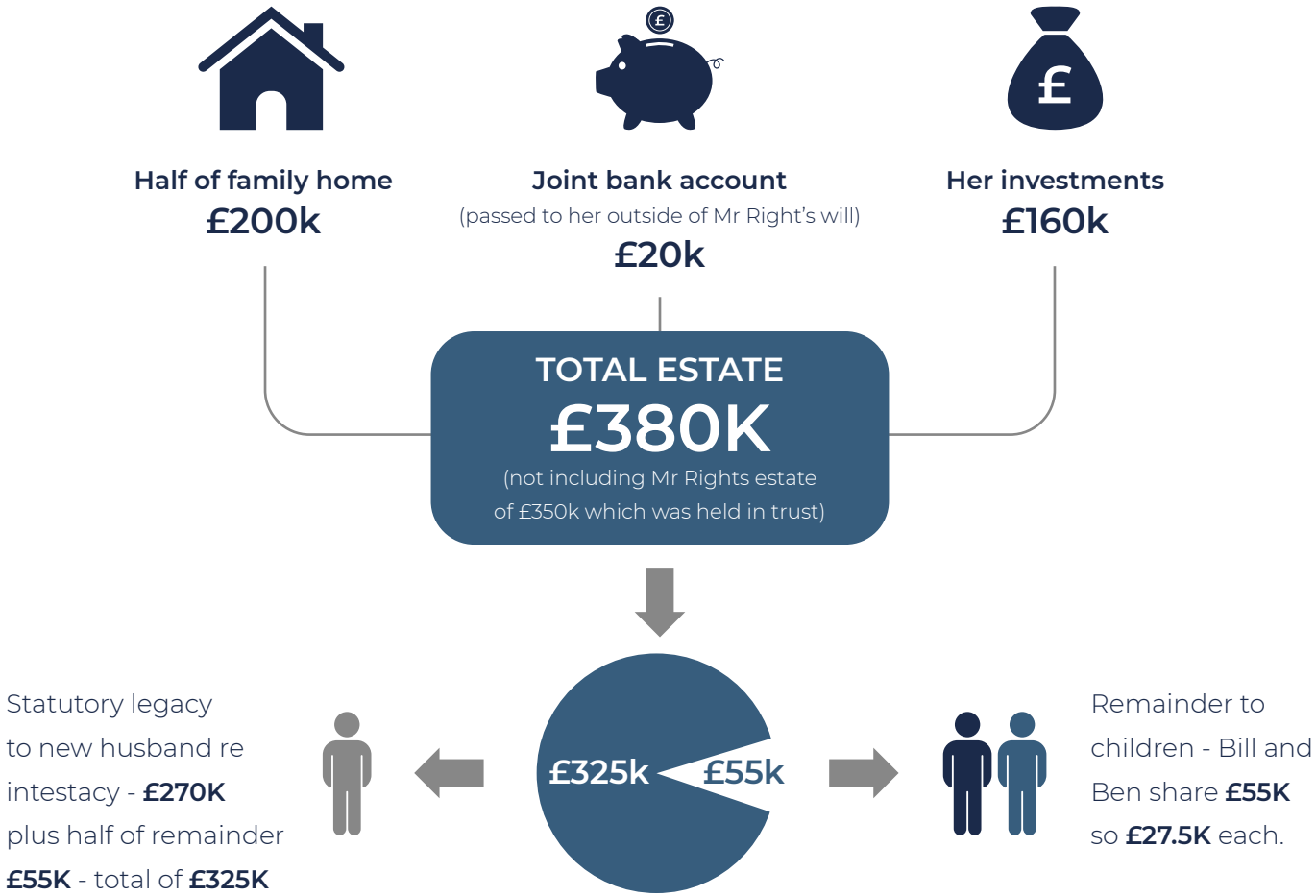


Mr Left has left his whole estate to Sally in a will made shortly after Mrs Left died. He did consider the children, Bill and Ben, but he was not pleased with the way they behaved in the aftermath of their mothers' death, so decided that they did not deserve to be left anything at all. Sally would, therefore, receive the £500k he inherited from Mrs Left as well as any money or property held by Mr Left. If Bill or Ben object to this then they have almost no chance of successfully claiming against Mr Left's estate. Also Mr Left's estate has no benefit from the residence element of the nil-rate band, as he did not leave his estate to qualifying beneficiaries, so this sum would be taxable.

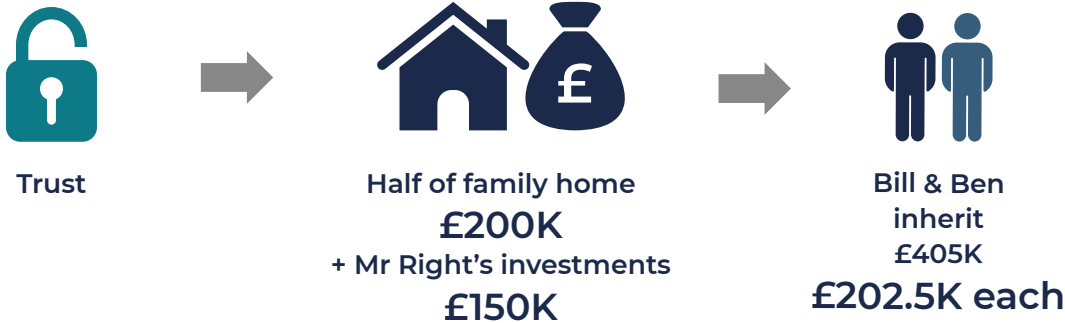


Life interest trusts

After careful thought, Mr and Mrs Right had decided to do life interest trusts in their wills of both their family home and the residue of their estates. They had severed their joint tenancy of the family home and became tenants-in-common, owning half each (a simple document). When Mr Right died his half of the property and his solely owned investments passed to his wife, Ellen, for the rest of her life. Tragically Mrs Ellen Left (formerly Right) died in an accident shortly after her re-marriage and did not have a chance to write a new will. As Mrs Left's new marriage revoked her will made in 2016 the half of the estate owned by her now passes under the intestacy rules. Her estate is as follows:



Bill and Ben now inherit their fathers' estate from the trust which ended on their mothers' death. They, therefore, inherit half of the family home and Mr Rights investments. This adds up to further legacy of £175k each, bringing their total inheritance to £202.5k each.



Mr Left has left his whole estate to Sally in a will made shortly after Mrs Left's death. Sally would, therefore, receive the £325k he inherited from Mrs Left as well as any money or property held by Mr Left. If Bill or Ben object to this then they have almost no chance of successfully claiming against Mr Left's estate. Also Mr Left's estate has no benefit from the additional residence element of the nil-rate band, as he did not leave his estate to qualifying beneficiaries.

Of Mr and Mrs Right's joint estate of **£730k**: Mr Left inherits **£325k** Bill and Ben **£202.5k** each.

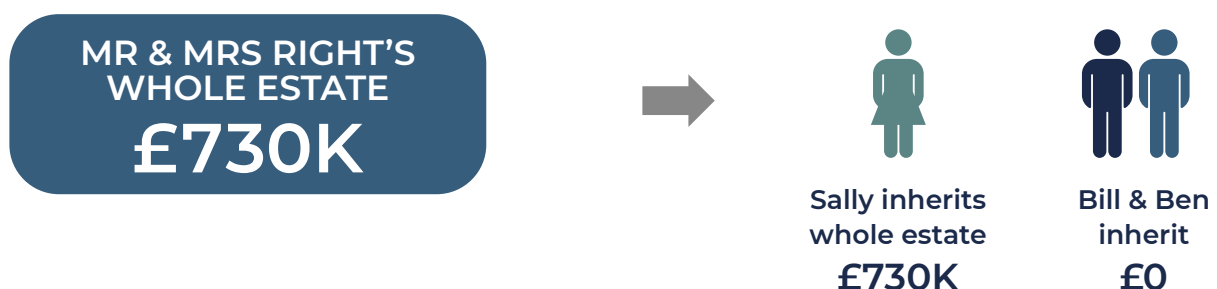


Absolute gift followed by absolute gift by will

After meeting with the wills specialist, Mr and Mrs Right were unhappy at the suggestion of an independent trustee to protect the interests of all the beneficiaries. They felt as though the survivor would be answerable to a third-party and the trusts existence would potentially cause extra expense and unnecessary complication. Mr and Mrs Right also saw no obvious reason to protect their estates, given that they share children and that they would both wish for them to benefit ultimately. Therefore when Mr Right died he left his whole estate to his wife.

Mrs Left went to see another wills specialist just after her re-marriage, along with her new husband. Despite being warned of the dangers, they elected to leave their estates to each other and in the event that they were to pre-decease each other, Mrs Left to her children and Mr Left to his niece. They both assured the other they would look after their respective loved ones if they were the ones left.

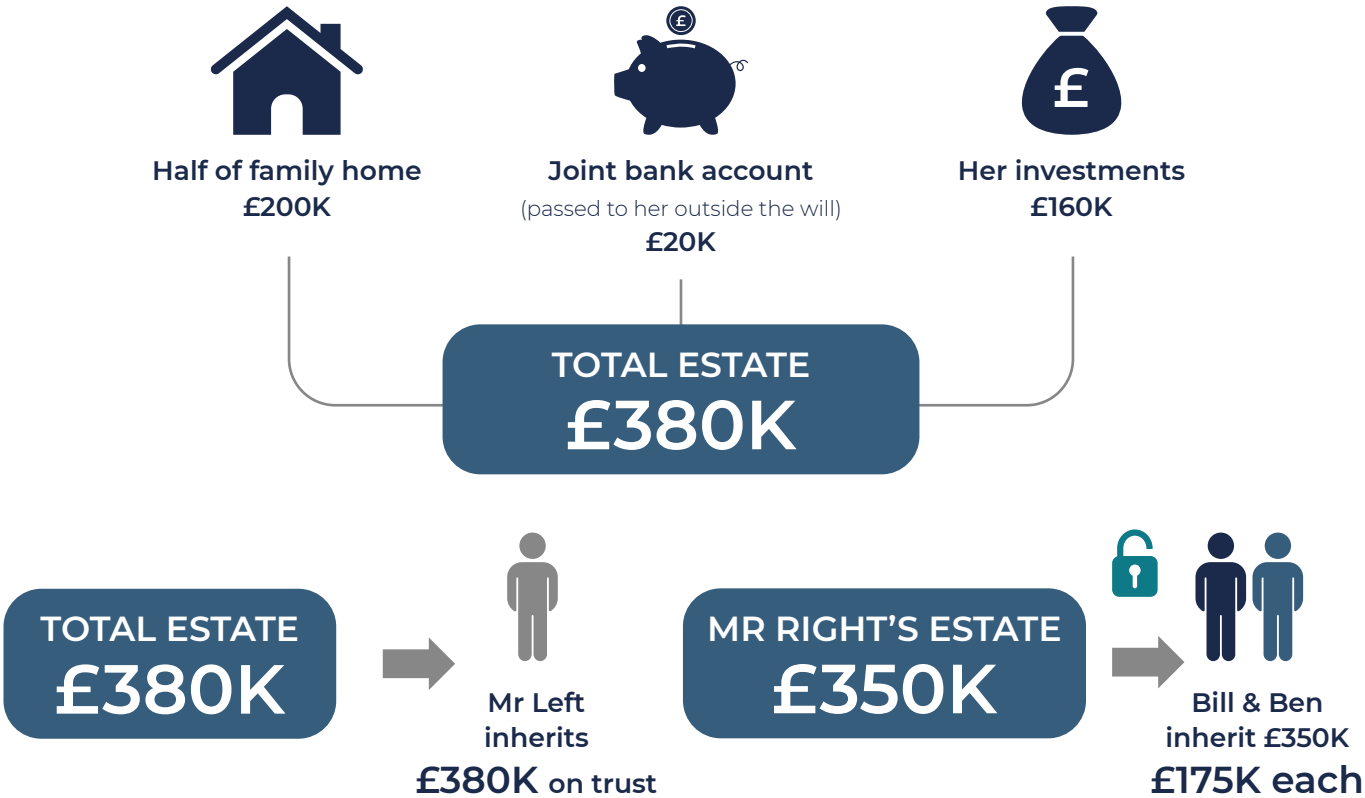
When Mrs Left died, her whole estate passed to Mr Left free of tax. Mr Left, unfortunately, was suffering from dementia and was not able to change his will to honour his late wife's wishes. The whole estate of £730k from Mrs Left as well as his own assets passed to his niece, Sally. This gift was taxable.



Life interest trusts followed by life interest trusts

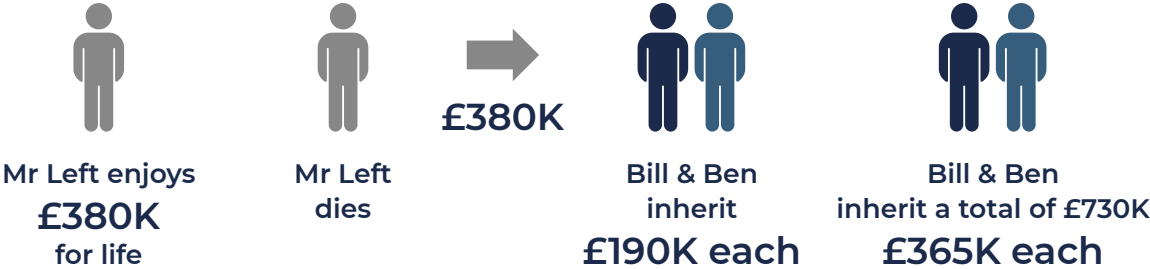
After careful thought, Mr and Mrs Right had decided to do life interest trusts in their wills of both their home and the residue of their estates. They had severed their joint tenancy of the family home and become tenants-in-common owning half each (a simple document). When Mr Right died his half of the property and his solely owned investments passed to his wife for the rest of her life.

Mrs Left went to see another wills specialist just after her re-marriage, along with her new husband. Mrs Left was already aware of the benefit of a trust and decided that she would leave her estate to Mr Left for life, then to her children. Her estate is as follows:



Whole fund passes to new husband on life interest trusts - total of **£380k**. Bill and Ben now inherit their fathers' estate from the trust which ended on their mothers' death. They, therefore, inherit half of the family home and Mr Rights investments. This adds up to a legacy of **£175k each**.

Mrs Left had Left the remainder to her children - Bill and Ben will receive the whole fund of £380K left by Mrs Left when Mr Left dies. This means that Bill and Ben would receive the whole of their parents' joint estates. Mr Left enjoys Mrs Lefts estate of **£380k** for life. Bill and Ben eventually receive **£730k** or **£365k each**.



Which Type Of Trust?

Life Interest Trust - LIT

A life interest trust gives the beneficiary an indefeasible interest in trust assets. Depending on the terms, the chosen trustees must allow the beneficiary to occupy any property or receive any income as a right. If used for a married couple or civil partner this arrangement also enables the survivor to utilise their nil-rate band and the additional residence nil-rate band. For tax purposes it has the same effect as if the assets were left outright.

Discretionary Wills Trust - DWT

A discretionary trust means that you can leave your estate to a number of 'potential beneficiaries', none of whom would have any right to any income or capital. The trustees wield great power over trust assets so they must be chosen carefully. This type of arrangement is very flexible and is generally accompanied by a 'Letter of Wishes' which you can keep updated as your family situation changes.

Benefits which applies to both types of trust are:

- Passing assets into trust helps to ensure at least half of the family home, or half of joint assets, are protected for children or other beneficiaries that you wish to benefit, and cannot be changed regardless of what the survivor does. However, the survivor's half is theirs to do with as they wish.
- The value of the assets passing into trust is not usually assessed as part of your beneficiaries' estates for means-tested benefits and services, such as care home fees.
- Assets passing into trust protects a vulnerable survivor from predatory individuals. Even if the survivor did enter into a predatory marriage, the estate of the first to die would never be at stake. The trustees are also able to look after the trust assets for the benefit of the survivor in the case of their incapacity.
- Assets passing into trust protects children and other beneficiaries who are not yet able to manage them responsibly. Instead, you can choose people to manage them on your beneficiaries' behalf, safely and responsibly. Assets left to someone who is not able to manage money responsibly may also negatively impact their lives, especially if substance abuse is an issue. A life interest trust means the beneficiary has a right to the income, which may not be ideal for the most vulnerable, whereas a discretionary trust allows the trustees to exercise discretion regarding the payment of any income, but could allow a beneficiary to occupy a property owned by the trust free of charge.

Additional benefits of Life Interest Trusts:

- Using a trust utilises the tax-free transfers between spouses, and allows the full transferable allowances to be used by the estate of the second to die. For example, the Residence Nil Rate Band introduced in April 2017 provides an inheritance tax saving of up to £140,000 from April 2020 provided certain requirements are met.

Additional benefits of a Discretionary Will Trust:

- Assets left into the correct trust arrangement will not increase the estates of your beneficiaries and therefore be subject to inheritance tax on their deaths. This avoids a second full charge to inheritance tax for the same assets. Can also utilise a transferable nil-rate band from an earlier marriage for widows and widowers, which would otherwise be lost.
- If you have concerns about the potential for risky behaviours concerning money you can effectively protect them from having access to any capital or income.
- If your collective assets are over £2,000,000, a trust can divert assets over this sum so that the Residence Nil Rate Band, introduced in April 2017, is not lost - providing an inheritance tax saving of up to £140,000.
- Assets passing into trust are better protected from divorce /creditor claims. As the beneficiary will not have any right to the assets they may be disregarded when assessing their financial situation. Often used if beneficiaries are in the process of divorce, where the trust would usually be brought to an end once any financial issues are settled.
- Current law allows for the distribution of estates to be changed after a person has died by use of a 'Deed of Variation'. If all the parties concerned are agreeable, the most tax-efficient arrangement can be put into place even after a person has died.



BEWARE! There are, of course, pitfalls as well as benefits. Trustees who look after assets must be chosen with great care, as they hold a great deal of power, and have administrative responsibilities to reporting and taxation. An independent trustee is often the best option if there is any possibility of falling out or hostilities.



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