St Joseph's Property Solutions LTD

Protective Property Trust (PPT)

St Joseph's Property Solutions LTD
Lincoln office
38 The Bailgate, Lincoln, LN13AP
Tel: 01522 526413

Company Receptionist: 01832 864020
Mobile: 07580 634449

email: info@stjosephs-online.co.uk
website: www.stjosephs-online.co.uk

1. What is a Protective Property Trust?

A Protective Property Trust (also known as a PPT) is one of the most widely used trusts in wills today. It gives another person known as the Life Tenant (usually a spouse or partner) a right to live in property for the rest of their life, or for a period of time specified.

If the life tenant wishes to move, the trustees have the power to sell the property and use the sale proceeds to purchase a substitute property for the life tenant to live in. Any additional proceeds of sale will remain in trust and the income from the funds will be paid to the Life Tenant. Powers to advance capital can also be included should the clients wish.

At the end of the trust, the property can pass to other beneficiaries (usually children).

2. Why use a PPT?

The most common use of a PPT is between spouses or civil partners who grant each other a life interest in the family home and then provide that their shares in the home will pass to their children at the end of the trust, ensuring that the children will inherit. Gifting the share in the home to the surviving spouse outright in the Will or allowing it to pass to them by survivorship can cause a number of problems.

If the survivor remarries, the house could be passed to their new spouse under a new Will/by intestacy or alternatively, if this new marriage ends in divorce, the house could form part of the divorce settlement. A PPT will ensure that the children (or other chosen beneficiaries) will inherit the deceased's share.

A surviving spouse could be subject to long term care fees or bankruptcy in the future. If the deceased puts their share of the property into a PPT on first death, that share will be owned by the trust rather than the spouse outright and is therefore sheltered from the surviving spouse's potential long term care fees or bankruptcy.

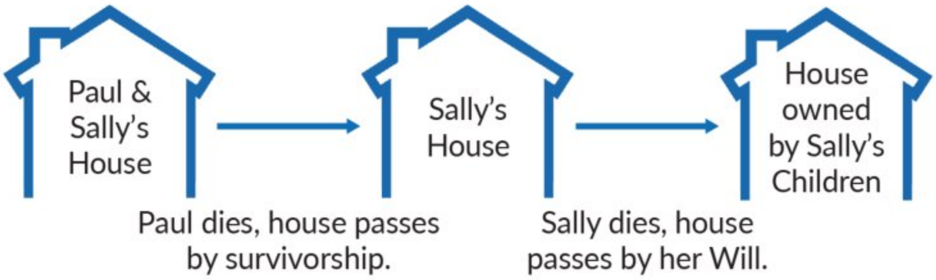
PPTs can also be useful for couples who each have children from previous relationships. In such cases the survivor can be allowed to live in the home and each can leave their own share in the home to their own children. This avoids the surviving spouse from potentially disinheriting them.

Where clients own a relatively large house, the power to downsize can be useful as the Life Tenant may not be able to cope with a property of that size as they grow older.

Clients often are not comfortable with the idea that a surviving spouse could form a new relationship and the new partner could benefit from living in the property. Provision can be made however for the PTT to end and the share distributed to the beneficiaries if the spouse or civil partner remarries, enters a new civil partnership or starts living with another person as if they were married/civil partners.

Example 1

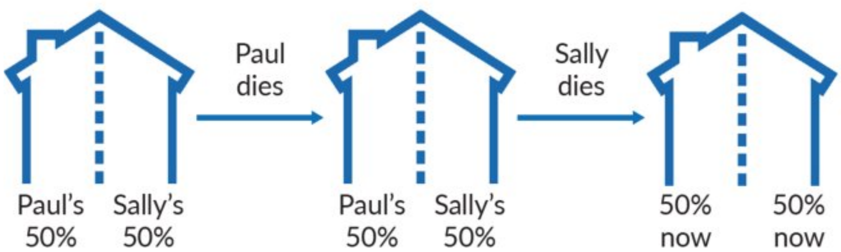
Paul and Sally are a married couple in their 60s. Both have been married previously and have children from their previous relationships. Their home is owned as joint tenants and they currently have home-made wills with each leaving their estate to their own children. Below is how the house would pass.



In this situation, Paul's children would not receive any benefit from the house

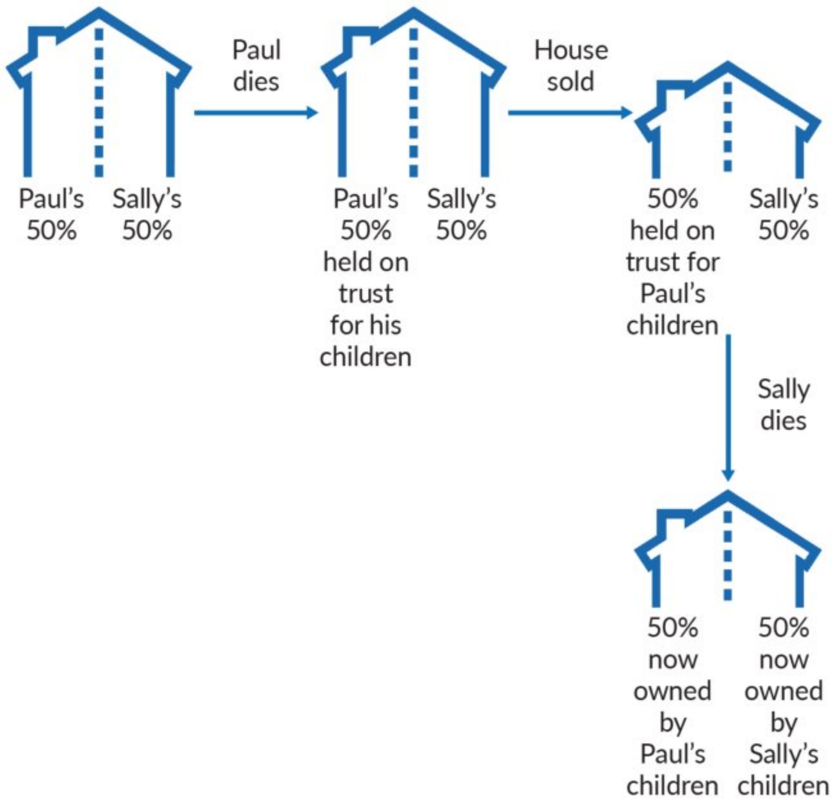
Example 2

Paul and Sally severed the Joint Tenancy to Tenants in Common and create a new will including a PPT. Each gives the other a life interest in their share of the property and at the end of the trust their respective shares will go to their own children.



Example 3

After Paul's death, Sally decides that the house is now too large for her and wishes to move to a smaller property. She sells the house and uses both her share and the share held in trust to purchase a bungalow.



3. Inheritance Tax

PPTs are not tax saving devices, there are no advantages for IHT purposes for placing a property into a PPT over gifting the property outright. A PPT is an interest in possession trust. This means that for IHT purposes, a Life Tenant will be seen as inheriting the property. When they die, it is then seen as part of their taxable estate.

In the majority of cases this won't cause any issues as the surviving spouse/civil partner will be the Life Tenant of the trust and the spousal exemption shall apply. The property will only be assessed for IHT at the end of the trust.

Where a couple are unmarried, or the Life Tenant is not a spouse, the spousal exemption does not apply and the property will be assessed as part of the Testator's estate when entering the trust and as part of the Life Tenant's estate on their death.

If clients are unmarried and are concerned about an IHT it may not be advisable for a PPT to be included in their Wills and other options such as a Nil Rate Band Discretionary Trust could be considered.

Where a PPT is not to end on the death (for example if it ends on remarriage/cohabitation) the gift of the property to the beneficiaries at the end of the trust will be seen as a potentially exempt transfer from the Life Tenant's estate for IHT purposes and will be subject to the seven-year rule.

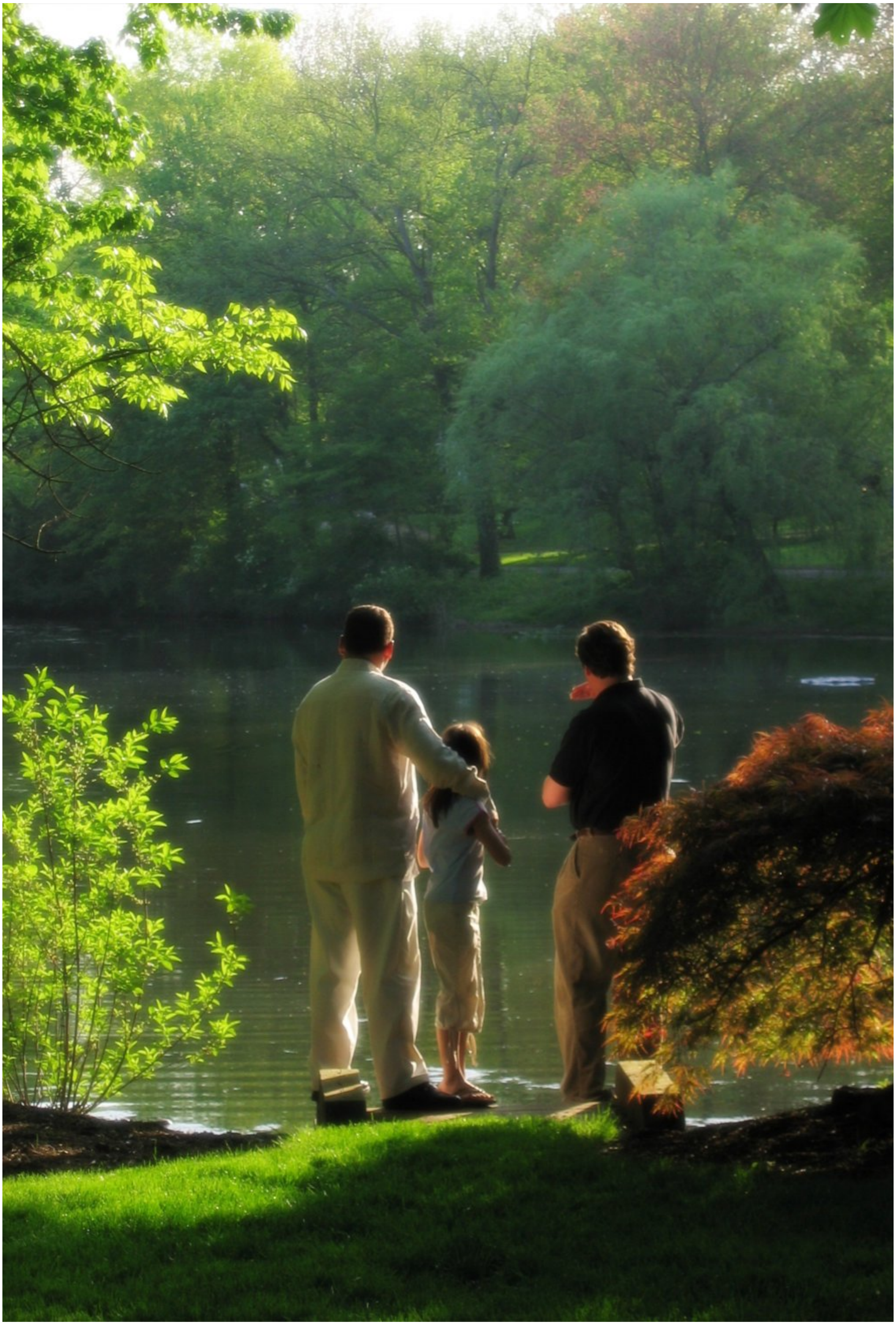
4. RNRB

The Residential Nil Rate Band (RNRB) will be available in the majority of cases. In the usual scenario of spouses/civil partners, as long as the eventual beneficiaries on second death are direct descendants, the RNRB will be available (please note that this does include stepchildren and their issue). However, where eventual beneficiaries are not direct descendants (for example nephews and nieces) RNRB will not be available.

If the Life Tenant is a direct descendant, RNRB will be available on the Testator's death, as for IHT purpose the descendant will be seen as inheriting the property.

In all other cases, RNRB will not be available.

Please note that for a PPT to be used in a Will, the property must be held either solely or as Tenants in Common. For more information, please see 'What Property is Yours?'



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