

Making Wills and Balancing Beneficiaries

My name is Miss Saver, I am divorced and have two children from my previous marriage. I now live with my partner Mr Rich in our jointly owned home, 1 New Lane, and he also has two children from his previous marriage. In the event of our death, we want each other to have security of occupation of the property, but ultimately for our respective children to inherit our assets. Can this be achieved?

The short answer to this question is “yes”, by preparing carefully drafted Wills incorporating Right of Occupation Trusts. We can look at this area of law a little closer with a helpful re-cap of the property ownership issues and a practical example to illustrate how the arrangement works in practice.

Joint ownership of property

There are essentially two methods of property ownership.

The first is a Joint Tenancy. If one person dies under a Joint Tenancy then the property will automatically pass to the survivor, regardless of the provisions of the deceased person's Will.

The second method of ownership is Tenants in Common. Under this arrangement, each person can pass their share in the property through their Will to beneficiaries of their choice. Therefore, it is this method of ownership that would be required for Miss Saver and Mr Rich.

If a property is owned as Joint Tenants then this method of ownership can be changed to Tenants in Common as part of the Will preparation process.

Right of Occupation Trusts

The Right of Occupation Trust (“the Trust”) only comes into effect in the event of death, which provides the flexibility that you do not commit yourself to any

restrictions during your lifetime and you are free to alter your Wills at any point should your circumstances change.

As stated above, Wills could be prepared incorporating the Trust and we shall assume that the property is held by Miss Saver and Mr Rich as Tenants in Common. This means that they own separate half shares in property can pass these shares through their Wills.

Under the Wills Miss Saver and Mr Rich each include provisions that in the event of their death, they each leave their half shares of the property into the Trust.

The terms of the Trust provide that when one of them dies the survivor can reside in the property 1 New Lane (“the Property”) for the remainder of their lifetime. It could also allow them to move to an alternative property should the need arise. For example it might be necessary to move to a bungalow in later life.

In the passage of time when the survivor of them dies, the terms of the Trust would provide that the Property is to be sold and the proceeds distributed to the ultimate beneficiaries.

Under the Wills they can also decide to leave any liquid assets to each other or, if they wish also to their respective children.

A worked example

We can illustrate the practical nature of the Trust arrangement with the following example:

1. Miss Saver and Mr Rich prepared Wills in 1995 incorporating a Trust in respect of the Property, with the rest of their assets passing to their children outright;
2. Mr Rich died in 2003 and his half share of the Property passed into the Trust, which allowed

Miss Saver to live in the Property during her lifetime and on her death for his half share to pass to his children;

3. Miss Saver continued to reside in the Property under the terms of the Trust rent free, but subject to her paying the outgoings and utilities, until her death in March 2009;
4. On Miss Saver's death the Property was sold and the proceeds distributed. One half share of the net proceeds was paid to Mr Rich's children and the other half share was paid to Miss Saver's children in accordance with the terms of the Trust; and
5. The rest of Miss Saver's assets also passed to her children in accordance with the provisions of her Will.

Final comment

The Trust provides an effective way for people to balance competing interests of beneficiaries. In this example, Mr Rich and Miss Saver achieved a mutual wish to benefit their own children without compromising their own security. The Wills they prepared made sure that the right balance was achieved for each other and their children.

This literature is intended purely as an overview of this area of law in England and Wales and no action should be taken upon it without specific legal advice