

# Wills For Married Couples

Where one is vulnerable,  
e.g. suffering from mental health problems

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When a husband or wife is suffering from mental health problems, it is important to make a Will or change an existing Will so that, if the person is the surviving spouse, he or she is not left handling their own money. This can be achieved by giving the person a life interest in the estate of the other spouse. Trustees will hold the money and “ring-fence” it to protect it and make sure that the spouse has all their needs met and bills paid without the responsibility of managing the money him/herself.

There are two other concerns that many people have:

1. Inheritance Tax; and
2. the payment of Care Fees.

## INHERITANCE TAX

Inheritance Tax is at the rate of 40% of everything we leave above the Nil Rate Band which is currently £325,000. The introduction of the Transferable Nil Rate Band in October 2007 helped to reduce the Inheritance Tax bill on the second spouse's estate by giving the second spouse's Executor the right to claim the first spouse's unused Nil Rate Band. This has created a significant tax saving. This means that on the death of the second spouse, the Nil Rate Band (the amount which is tax free) is doubled if the first spouse leaves everything to the second spouse.

This year (2010/2011) the Nil Rate Band (or tax free band) for a couple where the first spouse's Nil Rate Band is transferred is £650,000.

To make sure you are entitled to this on the second death, the couple should make Wills leaving everything to each other, or giving each other a life interest so the surviving spouse exemption applies on the first death which leaves the whole amount available to be claimed tax-free on the second death.

## PAYMENT OF CARE FEES

It is not only Inheritance Tax that will reduce the estate – it is now the possibility of Care fees which in some cases take the whole estate leaving the children with virtually nothing.

A **Life Interest Trust** for the surviving spouse will also provide protection. This is because the estate of the first to die is not given absolutely to the surviving spouse so it cannot be used for means testing. It can be used for the surviving spouse but it cannot be taken into account by the local authority or primary health care trust for the payment of care fees.

This means that whatever is in the Trust (e.g. money, half share in the family home) is ring-fenced. So:

1. It cannot be used for Nursing Home or Care Home fees (unless the second spouse and Trustee agree);
2. It cannot be given away by the second spouse even if he/she remarries;
3. It cannot be claimed by creditors;
4. It is protected from financial mismanagement by a vulnerable second spouse.

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It is however available for the second spouse's needs during his/her life.

For married couples who are concerned to protect assets from being taken into account for meanstesting, and also to protect a vulnerable spouse, then a Life Interest Trust provides useful protection as described above.

A married couple will usually want to ensure that they protect and provide for each other and then leave what is left to the children on the second death. A Life Interest Trust in both Wills gives both spouses protection, is tax efficient, and ensures that up to half of their combined assets go to their children on the last death.

## WHAT IS THE COST?

The legal costs involved in dealing with **Life Interest Trust Wills** depend on the time spent and the amount of work involved. However, as a guide, we set out below



the likely cost:

<b>Preparing Husband and Wife Wills containing Trust (including interview with clients)</b>	<b>£650.00</b>
<b>Severing joint ownership of house (includes notice of severance, restriction at Land Registry)</b>	<b>£100.00</b>
<b>Letter of Wishes</b>	<b>£100.00</b>
<b>Total</b>	<b>£850.00</b>
<b>PLUS VAT</b>	

**IF YOU WOULD LIKE MORE INFORMATION ON LIFE INTEREST TRUSTS PLEASE CONTACT US AND WE WILL BE GLAD TO EXPLAIN THE PROCESS AND HOW IT WILL APPLY TO YOUR SITUATION.**

**PLEASE CALL THE PRIVATE CLIENT TEAM ON 020 8891 6141**



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“You came recommended as the ‘best solicitors in the area’ and you certainly lived up to that reputation!”

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