

# clarityLAW

## Wills - Case Study Three: Will Trusts (Protection of Assets)

### The Facts

Mr and Mrs Holmes had straightforward affairs and as a result of a recent business sale were well off with a combined estate value in the region of £10m.

They had two adult children Robbie (21) and Lisa (22). Robbie was into extreme sports and did not know what he wanted to do in life having dropped out of university. Lisa was currently working at a local stable and wanted to have a career involving horses.

Mr and Mrs Holmes simply wish to leave everything on the first death outright to each other and then on the death of the survivor, equally between their two children.

### The Problems

Both Mr and Mrs Holmes were adamant that they wish for their children to ultimately benefit from the combined value of their estates. However, in leaving their estate outright to each other on the first death this could not be guaranteed.

If one of them was to die then the survivor could well remarry. The survivor would then take into that new relationship the entire £10m estate and if that second marriage ended badly in divorce then the entire £10m would be up for grabs. Mr and Mrs Holmes had not been aware of this problem and because of their adamant wish for their children to benefit come what may rather than leave everything outright to each other on the first death, they should create a life interest trust for the survivor of them. In this way, assets that were in the estate of the first to die would be held in trust for the survivor and then for the children.

The second problem (which was the one they were aware of) relates to the fact that potentially their children could inherit a great deal of money at a relatively young age. They were concerned that this would not be suitable for a number of reasons:

- The children's potential vulnerability to exploitation and 'gold-digging';
- The children's immaturity in terms of personal behaviour and business;
- The removal of any incentive for the children to establish a career; and
- The potential effect that the amount may have on the children emotionally and developmentally.

### The Advice

Following a detailed discussion it was agreed that, on the first death, rather than an outright gift, a life interest trust would be established for the benefit of the survivor.

The survivor's life interest trust would be flexible to allow assets to be passed out of the trust both to the survivor and, importantly, to the children if the trustees decided this was sensible.



In relation to the potential concerns of the children's ultimate inheritance then, on the death of the survivor, the estate (and the survivor's trust) would go:

- 15% to go to each of Robbie and Lisa outright upon them attaining the age of 25; with
- The remaining 70% being divided further into parallel life interest trusts where each of Robbie and Lisa would have a life interest in their respective funds and the trustees would have the power to appoint capital to them.

Both Mr and Mrs Holmes left detailed letters of wishes with their Wills, addressed to their trustees (family friends). The letters set out the reasons why they had not left all of their estate outright to their children but had established trusts and under what circumstances they would expect the trustees to advance trust capital to each child. For example, for a child to find a house to buy or wish to establish a suitable business, then Mr and Mrs Holmes would like the trustees to exercise their discretion in this way.

The choice of trustees is extremely important. Mr and Mrs Holmes are lucky in that they had close family friends they could rely on. Some thought had been given to whether or not Mr Holmes' brother (loved by Robbie and Lisa) would be a suitable trustee but in view of the fact he was impecunious it was felt that putting him in the position of looking after a considerable sum of money for his nephew and niece would not be palatable.

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