

## **A Handy Guide to our Will Trusts**

Please find below an overview of each of our trust products so that you can compare before deciding which suits your circumstances best.

### **ROR – ‘Right of Residence’**

A ROR allows a testator to give a person of their choice (‘the Occupant’) a right to live in their property after their death. It is generally used when a person owns a property in their sole name and has another person, usually a spouse, partner or family member, living with them. It can be for the Occupant’s lifetime or it can be restricted by time, e.g. a certain number of years, or event e.g. if the Occupant co-habits (it will be defined in the will what “co-habit” means) or remarries.

Once the right of residence expires, either as a result of the Occupant’s death, expiry of the relevant time restriction, or the occurrence of the relevant event, the property then passes to the beneficiaries that are named in the will. The Occupant doesn’t have any right to dispose of the property and if they wish to move out, the property will pass to the beneficiaries at that point.

### **PPT – ‘Property Protection Trust’**

A PPT is a life interest trust in relation to one or more properties. It is useful to protect a half share in a property to protect children from previous, or future, relationships (i.e. protection from sideways disinheritance if the surviving spouse/partner were to meet somebody new) and ensure that they eventually receive their intended inheritance whilst providing some protection for a surviving spouse. It can also be a way of protecting the value of at least half of a property from means assessments for care fees, although please take your associate’s advice on this element.

This planning will require severing a joint tenancy (if the property is held jointly) to become tenants in common (a simple process with the Land Registry) and then creating wills with PPTs in each. The PPT allows the surviving co-owner to continue living in the house after the first death or allows them to downsize or rent the property out and receive the income, whilst ultimately holding the share on trust for the intended beneficiaries (usually children but can be anyone you choose).

### **FLIT – ‘Flexible Life Interest Trust’**

A FLIT is similar to a PPT but includes other capital assets as well as property, for example solely owned savings and investments. The ‘life tenant’ has the right to receive any income generated from the capital during their lifetime, then, on their death, the assets pass absolutely to the ‘remaindermen’ (i.e. again usually children but can be anyone you choose). The Trustees can also loan capital to the life tenant which would be repayable on their death as a debt of their estate. This trust is useful where there are substantial assets other than the main property, such as rental properties or investment portfolios.

### **DT – ‘Discretionary Trust’**

A DT is a general trust which allows the Trustees to manage whatever funds are passed into the trust fund at their absolute discretion. This means that they can either retain the assets within the trust fund to accumulate income, or distribute either income or capital between a given list of named beneficiaries or a particular class of beneficiaries, e.g. grandchildren. None of the beneficiaries have an absolute entitlement to the trust fund as distribution is at the sole discretion of the Trustees. This means that the funds are protected from being taken into account for means assessments for state benefits or care fees. Furthermore, if a beneficiary was to become bankrupt or was to get divorced, the trust assets would be protected.

A letter of wishes should generally be created at the same time as a DT to give some guidance to the Trustees as to how the testator would ideally like the trust assets to be distributed and who they would like to benefit from the trust.

### **NRBDT – ‘Nil Rate Band Discretionary Trust’**

A NRBDT can be useful for non-married couples who are concerned about mitigation of IHT as they do not have the benefit of a transferable nil-rate band. If a NRBDT is used then the value of the NRB at the time of the first death is protected as it does not form part of the survivor’s estate and thus will not be included in the IHT calculations on their death. Usually, the survivor can still benefit from property or assets held within the NRBDT by way of discretionary payments or loans from the trustees.

### **DDT – ‘Disabled Persons Discretionary Trust’**

A DDT is used where a beneficiary is disabled or vulnerable. The trustees have discretion over whether to retain or pay the funds out in such a way as is appropriate to fit the needs and circumstances of the primary beneficiary. Disabled Persons Trusts receive favourable tax treatment in relation to income tax (20% instead of the usual 45% trust tax) and are not subject to anniversary or exit charges, but in order for a trust to be effective for the favourable tax treatment the primary beneficiary must qualify as a ‘disabled person’ under s.89(4) of the Inheritance Tax Act 1984. One of the main benefits of this type of trust is that the primary beneficiary will not need to be responsible for managing large sums of money themselves which they may struggle to manage or be incapable of managing.

### **BPT – ‘Business Property Trust’**

A BPT is a discretionary trust that includes all assets that qualify for 100% Business Property Relief (BPR). The purpose of the BPT is to make use of the IHT relief gained by certain qualifying business assets by transferring such assets into trust without this particular transaction affecting the available Nil Rate Band of the deceased. As the BPT is a form of discretionary trust, the Trustees have discretion over what happens to all assets within the Trust in respect of whether the business continues to run or is sold and assets distributed. They will also have discretion over distribution or loans to the named potential beneficiaries.