The Flexible Life Interest Trust

A Flexible Life Interest Trust, ("FLIT"), allows a person who survives the testator immediate benefit of the testator's investments, assets and/or property whilst still protecting the value of the assets for the benefit of other ultimate beneficiaries. This type of trust is often used where the testator has children from a previous relationship and effectively protects those assets in the event the surviving spouse either remarries and/or writes a new Will.

The Trust is created when the first spouse dies and so rather than the assets going to the surviving spouse they go into a newly formed Trust which, though the trustees, manage the assets and pay the surviving partner, any income from the trust thus having a life interest in the assets. If the assets include property this can also include the right for them to occupy that property for life.

The advantage of this type of trust is that it means the first partner can control what happens to the trust assets after the second death through the flexibility given to the trustees

Another benefit to using this type of trust is that, for Inheritance Tax ("IHT") purposes, it is regarded as an outright gift to the surviving spouse and should the couple have been married or in a civil partnership then the FLIT does not infringe upon any of the IHT allowance of the deceased spouse instead reserving it to be used it for later use on the death of the surviving spouse.

By the remaining spouse having a life interest in the property that they live in instead of outright ownership also safeguards the property from being included in any means test of the surviving spouses' assets should they require residential care.

Whilst these are the most obvious benefits to using a FLIT, other benefits include

- It allows for the estate to be distributed through future generations in ways that the trustees, acting within their powers, see fit;
- The trustees can loan any capital to the surviving spouse and this loan can then be repaid on the death of the surviving partner or should they be assed for care the debt be included within the assessment;
- Although it somewhat defeats the purpose of the creation of the trust, the trustees also have the power, through it being a flexible trust, to give (rather than loan) capital to the surviving spouse in addition to just the income, should it be necessary, even should this effectively include the trustees powers to have the trust wound up and the remaining assets distributed to the surviving spouse. The testator can, however, restrict this option;
- On the death of the second spouse the trust then distributes the assets according to the testators wishes and/or becomes a discretionary trust allowing for further management of the assets if necessary.
- The flexibility of the trust gives powers to the trustees to change the structure of the trust should it be deemed by them to be more beneficial for tax purposes to do so; and
- The trustee's powers can include gifting or loaning any capital to the designated heirs early should they see fit and it is not detrimental to the surviving 'life interested' spouse.

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