Property Protective Trusts & Right to Occupy Trust Factsheet

What is a Property Protective Trust?

A Property Protective Trust (PPT) is a clause written into a Will that protects the first person's share of a property when they die. It ensures that the surviving partner can continue living in the property, usually for the rest of their life, while safeguarding the deceased's share so that it ultimately passes to the chosen beneficiaries, such as children from the relationship or a previous relationship. The PPT ring-fences the share belonging to the deceased and holds it under control of trustees rather than allowing it to pass outright to the surviving partner.



This trust is most commonly used by couples who own property together. To leave a share of a property by Will, it must be owned as tenants in common, rather than joint tenants, because joint tenants each own the whole property and cannot pass their share by Will. Tenants in common by contrast, own individual shares which can be left under the terms of a Will.

A PPT therefore provides a practical balance: it gives the survivor the security of a home while still preserving value of the deceased's share so that it can be passed to beneficiaries chosen by the deceased, not by the surviving partner.

What is a Right to Occupy (RTO)?

A Right to Occupy (RTO) also allows a chosen person to live in a property after death, but it is generally simpler and less comprehensive than a full PPT. When a Right to Occupy is granted, the occupier does not own any interest in the property, they simply have the legal right to live there for a specific period, such as for life, until remarriage, or until they choose to leave. The property may remain owned solely by the beneficiaries or jointly by beneficiaries and trustees, depending on the wording of the Will.

Unlike a PPT, an RTO does not automatically provide an income or capital entitlement if the property is sold nor does it usually give access to capital. It is often used when a client wishes to offer somewhere to live but does not want to provide broader financial support or a life interest. RTOs may also be useful where the occupier's needs are expected to change quickly (for example, a temporary arrangement before moving into care).



Property Protective Trusts & Right to Occupy Trust Factsheet

What Does the Trust Protect?



A PPT is primarily a protective mechanism rather than a tax planning tool. It safeguards the deceased's share of the property from potential risks that may arise during the survivor's lifetime. For example, if the surviving partner later enters a new relationship or rewrites their Will, the deceased's share cannot be left to someone else, because it does not form part of the survivor's estate.

In many estates, an equally significant concern is local authority assessment for care fees. If the surviving partner later goes into residential care, their own share of the property may be assessed by contributing towards the cost of care. However, the deceased partner's share is not owned by the survivor and therefore cannot normally be assessed for this purpose.

A further benefit is protecting against creditors or bankruptcy. If the survivor becomes bankrupt, only their own assets can normally be claimed by creditors. Because the trust holds the deceased's share, that share is not available to pay the survivor's debt.

In practice, a PPT allows a client to ensure stability for their partner while preserving an inheritance for their chosen beneficiary.

How the Trust Operates in Practice

A PPT or RTO is not active while both partners are alive; it is triggered by the first death. At this point, the deceased's share of the property is transferred into the names of the appointed trustees, who hold it under the terms of the Will. The survivor becomes a life tenant (in a PPT) or an occupier (under an RTO). They may live in the property without paying rent but are normally expected to meet everyday living costs, such as utilities, basic maintenance, and council tax.



The trustees' responsibilities vary based on the wording of the Will. They must ensure the property is adequately insured and may need to agree to significant repairs or structural changes. Trustees also hold the authority to sell the property if it becomes unsuitable for the life tenant. Many modern PPTs include "substitution clauses" allowing trustees to use the trust fund to buy any alternative home. If the replacement property costs less than the original, any surplus proceeds are held in trust and may be invested. The life tenant may be entitled to the income generated, depending on the terms set out in the Will.

Property Protective Trusts & Right to Occupy Trust Factsheet

If the property is sold and not replaced, the sale proceeds become a form of trust fund. In a PPT, this may give the life tenant a right to income from investments, and in some cases, access to capital at the trustees' discretion. In contrast, an RTO typically ends once the person no longer occupies the property and does not continue to provide benefits.

When the life tenant dies or the RTO ends, the trust terminates and the assets pass to the named remainder beneficiaries. These may include the deceased's children, grandchildren, members of a blended family, or another person of choice. In some cases, the Will directs the assets should pass into a further trust for continued protection across generations.

Inheritance Tax (IHT) Considerations

Although they can still be tax efficient, PPTs are not generally used to reduce Inheritance Tax. When the life tenant is a spouse or civil partner, the PPT typically qualifies for spousal exemption, meaning that no IHT is payable when the property share passes into the trust on the first death. The value of the trust is treated for IHT purposes as belonging to the life tenant, and it is therefore assessed on their death.



This treatment can be beneficial because the trust assets may qualify for the Resident Nil Rate Band (RNRB) if they ultimately pass to direct descendants (children, stepchildren, or grandchildren). The survivor's executors may also be able to apply any unused RNRB or Nil Rate Band (NRB) from the first death, potentially doubling available allowances.

Where the life tenant is not a spouse or civil partner, no spousal exemption applies, and IHT may arise on first death. If the PPT ends during the lifetime of the life tenant and assets are appointed out, this is generally treated as a potentially exempt transfer (PET) by the life tenant. They must survive seven years for the value to fall outside their estate for IHT purposes.

Capital Gains Tax (CGT)

When a trust holds property following a death, CGT may arise if the property is later sold. If the life tenant or occupier has continued to use the property as their main or only residence, the trustees may be able to claim Principal Private Residence Relief, meaning no CGT is payable on sale. However, if the life tenant has moved permanently into care or no longer occupies the property, CGT could apply to gains accrued from that point onwards.

Where sale proceeds are invested, gains made on investments by trustees may also be subject to CGT. Trustees have a lower annual CGT allowance than individuals, so careful management can help minimise exposure.

Property Protective Trusts & Right to Occupy Trust Factsheet

Income Tax



A PPT that pays income to a life tenant is taxed on the basis that the income belongs to the life tenant personally. If the trust receives rental income (for example, after the life tenant moves into care and the property is let out), that income is also taxable on the life tenant, even though trustees administratively collect it.

If the Will gives trustees discretion to provide income or capital, the trust may be taxed under the discretionary regime, which can lead to higher rates. Therefore, it is key to have clear drafting to avoid unintended tax consequences.

Choosing Between a PPT and a Right to Occupy



A PPT gives broad protection and may provide income and, in some cases, capital support for the survivor. An RTO offers only the right to live in the property, giving more limited benefits but sometimes offering a simpler solution. The best choice depends on the needs of both the survivor and the beneficiaries. Where long term security, blended families, or complex estates are involved, a PPT usually offers greater protection. In situations where a client wishes to offer accommodation without wider financial provision, an RTO may be appropriate.

Disclaimer

This factsheet is provided for general informational purposes only and is not intended, and should not be relied upon, as legal advice. SWW accepts no responsibility or liability for any actions taken on the basis of this note, and members should seek independent legal advice where appropriate.