

Protection of the Estates of Cohabiting Couples



Protection of the Estates of Cohabiting Couples

Generally, relatively few cohabitees receive adequate advice on the protection and inter-generational tax planning of their estates, be it pensions, Death in Service (DIS) benefits, life cover, property assets, savings and investments or lifetime inter-generational transfers.

Integrated financial planning and effective legal planning are essential in delivering the desired outcomes for cohabitees. The use of lifetime and deathtime Trust frameworks is a popular, reliable solution but many clients are rarely advised to use them by legal service providers and may be led to believe they are overly complex, and expensive to maintain which need not be the case.

Many cohabitees do not even have a Will and do not fully understand what difficulties can be created at probate and that their assets may not be directed where they would like them to go under intestacy rules. Their partner is often excluded from benefiting from the residual estate.

Thankfully, the majority of cohabitees at least have simple Wills that direct assets “absolutely” to their chosen Beneficiaries which is effective for directing wealth but inefficient in protecting it and extremely tax ineffective when assets are directed to a partner where spousal exemption rules do not apply, thus running the risk of double taxation in some cases.

If you are a parent or have family members who you wish to benefit from the wealth you have created during your lifetime, you must consider possible future outcomes that may befall your chosen Beneficiaries and address any concerns that you may have now or may emerge in the future.

Protection of the Estates of Cohabiting Couples

Common concerns many cohabitees have are;

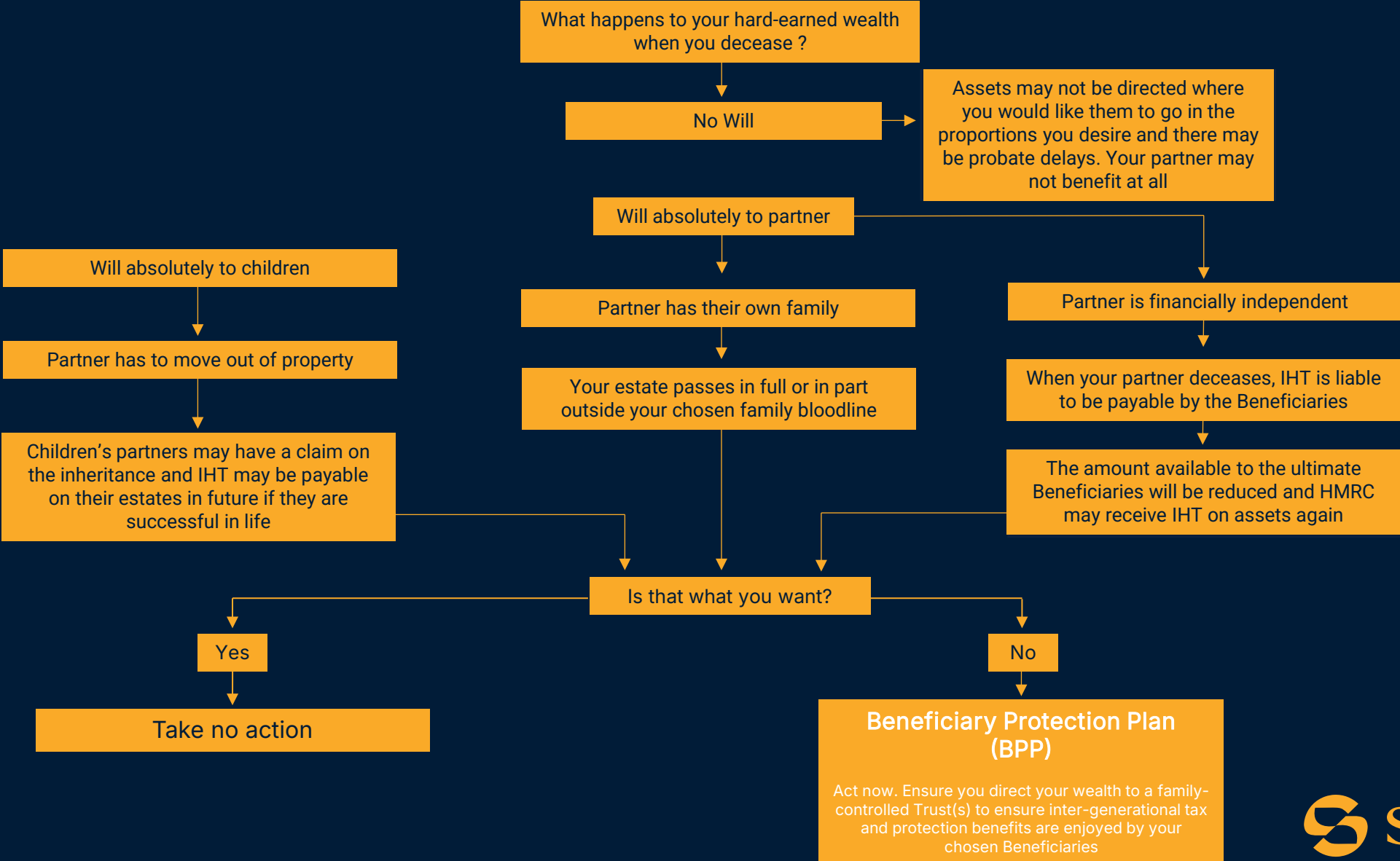
- What is the risk to your wealth following your death?
- If you leave your estate to your partner and they require long term care, what will happen?
- Loss of tax allowances because your Wills are tax ineffective.
- Will your assets ultimately pass to your chosen Beneficiaries after your partner deceases if they change their Will?
- What would happen to the inheritance your chosen Beneficiaries receive if they were to divorce?

- There may not be IHT payable when you die but it means your partner is highly likely to pay IHT because of your combined wealth.
- IHT will be payable when the first partner deceases and unnecessary double taxation may occur on the death of the surviving partner.

If you look beyond the inheritance to the Beneficiary, you will appreciate the many potential issues that exist and some of them are unique to cohabitees.

Many of the protection and tax issues can be effectively addressed with enhanced planning and advice using a Beneficiary Protection Plan from Solidus.

Protection of the Estates of Cohabiting Couples



The Beneficiary Protection Plan (BPP) Only from Solidus



Your residual estate passes into the BPP on your death



Trustees receive guidance from your "Letter of Wishes"



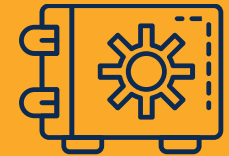
Trustees can engage Solidus through their estate planner for advice



Assets are invested to provide income or loaned to Beneficiaries and your partner may live in the property



Property is sold and loans repaid on death. Assets are available for the next generation, tax free



Tax efficiency. The BPP offers potential protection if a claim is made against a Beneficiary



SOLIDUS

Protection of the Estates of Cohabiting Couples

- Instead of your partner inheriting from you absolutely, a new integrated Solidus Will nominates a family Trust to receive the benefits and your partner can be the primary beneficiary.
- The BPP framework will not affect the tax treatment of the inheritance that passes to your chosen Beneficiaries which typically will be your partner, children and other intended parties. Any IHT will still be payable.
- The Beneficiary Protection Trust (BPT) is established now and unlike a Will Trust may be used during your lifetime to protect some lifetime transfers if appropriate.
- The residual estate gift will be made on death to your chosen Trustees (who are often family members and can be Beneficiaries themselves).
- The Trustees will take advice from your estate planner, or their successor, or from Solidus on claiming any available RNRB tax allowance, they can also grant a right of residence to a surviving partner in a tax efficient manner.
- They can also decide to invest some or all of the Trust Fund in order to provide a regular income (useful if a Beneficiary is not good with money or the capital is ultimately destined for other Beneficiaries e.g. grandchildren).
- Alternatively, Trustees have powers to make loans to Beneficiaries which means, with appropriate advice, such advances can be potentially protected from a third party and offer tax benefits for cohabiting couples. Capital sums may also be advanced.

Protection of the Estates of Cohabiting Couples

Case study

Sarah and John are both divorcees and have lived together for 15 years. They each have a child from their previous relationships. They own their property in equal shares under a tenants in common arrangement; the property is their main asset, and they have individual investments. They are likely to both need their own NRB and RNRB tax allowances in order to avoid inheritance tax.

They do trust each other but have simple Wills that leave their respective estates to their own children. They would like the surviving partner to be able to live in the property but are concerned this may be tax ineffective if a lifetime interest is granted. They are also concerned about their own children's relationships with their partners and understand the financial impacts of a failed relationship. Sarah's daughter is expected to inherit a significant sum from her father's estate.

Sarah and John consulted their estate planner, and it was suggested that they use an advanced Beneficiary Protection Plan structure. Each of their new wills will direct their residual estate into their own family Beneficiary Protection Trust when each of them die. No assets are transferred during lifetime and the Trustees simply take advice on each death.

If Sarah dies first an appointment of part of the property may be made to claim the available RNRB and the remainder of the property interest can be retained in Sarah's family Trust. John may live in the property without any increased tax impact upon his estate. On his death when the property is sold Sarah's daughter can receive the benefit of the proceeds IHT free.

In terms of Sarah's liquid assets if, at the time of her death, it is appropriate for her daughter to receive her share of the Trust Fund (assuming she is in a stable relationship) then this may be achieved by means of a loan. This approach will give her access to the funds but will not add to her own family wealth for IHT purposes. A similar protective Trust will be put in place for John but, if he is the second to die, his net estate will simply pass into his family Trust for his chosen Beneficiaries. The Beneficiary Protection Plan delivers both the tax efficiency and protective benefits that Sarah and John desired.

Protection of the Estates of Cohabiting Couples

Frequently Asked Questions

- **Are Beneficiary Protection Plan frameworks expensive to set up?** No, as a proportion of the value you protect is typically much less than one percent of the estate value.
- **Are BPTs expensive to run?** No, apart from £10 nothing goes into them until you die so until then there may only be an occasional cost e.g. changing a Trustee. There will be some initial advice costs when you die.
- **Who should my Trustees be?** We encourage you to consider adult family members, or trusted friends, speak to your planner for guidance.
- **What happens if I want to change the distribution of my estate?** No problem, you don't even have to change your Will. It is usually possible to make most changes by means of a new instruction to your Trustees (Letter of Wishes).
- **How long does my BPT last for?** 125 years in England and Wales and 80 years in Northern Ireland. Most families use them for at least one further generation.
- **Will my BPT be taxed?** Under current rules there is no tax going into the Trust after any IHT has been paid. A Trust is like a person and has its own tax allowances for Income Tax, Capital Gains Tax and Inheritance Tax. Your Trustees can take advice in the future.
- **Can my executors claim the RNRB if my residual estate passes into a BPT?** Yes, at probate your Trustees can elect to appoint out any required value within two years of your death.

Contact your estate planner in order to progress your Beneficiary Protection Plan application

Disclaimer – The contents of this e-brochure should not construe as advice, and you should consult your estate planner. The provision of Trusts is a regulated activity administered by the Solicitors Regulation Authority and not the Financial Conduct Authority.

This brochure and its content is copyright of Solidus - © Solidus 2021. All rights reserved.

Any redistribution or reproduction of part or all of the contents in any form is prohibited other than the following:

- you may print or download to a local electronic storage for your personal and non-commercial use only.
- you may copy the content to individual third parties for their personal use, but only if you acknowledge Solidus as the source of the material.

You may not, except with our express written permission, distribute or commercially exploit the content. Nor may you transmit it or store it in any other form of electronic retrieval system.

Premier House, 1-5 Argyle Way, Stevenage, SG1 2AD www.siep.co.uk

