HERRINGTON & CARMICHAEL SOLICITORS

"Plain speaking legal advice"

Life Interest Trusts

www.herrington-carmichael.com

What is a life interest Trust?

It is a right to receive income or have the use of property for life. Where a life interest trust subsisted prior to 2006 or is created by Will then as far as inheritance tax is concerned, a life interest is neutral. The underlying value of property is in effect treated as if it were part of the estate of the person with the right to its use or income. If the Trust was created by way of a lifetime transaction after 2006 the inheritance tax treatment is different and the trust may be subject to tax on it's creation at up to 20% and thereafter at 6% every 10 years. As a consequence of this the creation of these trusts during lifetime is less common unless the trust created is below the Nil Rate Band for inheritance tax.

Types of life interest.

Straightforward, there is not even a usual name for this but it the simplest form with few if any special provisions. In such a trust a person (Paul) has the right to income from the trust property for life. Either Paul receives income derived from Capital or the Capital may be used to by a property in which Paul lives. He does not own anything. After Paul's death the underlying value of the Trust fund, that is the investments or Property owned by the trust passes to the another person or persons who then do become the owners. Paul is called "the Life Tenant" and the people who ultimately inherit are called "the Remaindermen".

Protected life interest, not very common nowadays, the idea is to ensure that the beneficiary does not try to deal with his or her right to income.

Flexible Life interest, in recent years these have become very popular in Wills or lifetime Trusts (including Trust of life policies). In this sort of trust the *Trustees* are given wide powers to vary the terms of the life interest. Typically this would include rights to transfer trust property to the principal beneficiary, or to terminate the right to income and transfer the trust property to someone else. There are also frequently rights to completely change the terms of the trust including creating new trusts. This type of arrangement can sometimes be used for tax planning.

"Plain speaking legal advice"

What are the benefits of life interest Trusts

They can be used to protect the trust property. The beneficiary of the Trust does not own the trust property, this means that he or she cannot squander it or leave it to someone that the original owner did not want to benefit. It also protects against creditors and in the modern world it shelters property against means testing, for example if a husband has a life interest under his late wife's will and by virtue of this is living in a house which belongs to the trust then if he has to going into a nursing home the local authority cannot force the Trustees to sell the house to pay for the nursing care, however any income that was derived from the house would be subject to means testing. Another common use of life interests is where the parties to a marriage have been previously married and have children from the earlier marriage, the life interest trust benefits the survivor but ensures that ultimately each party's estate goes to his or her children.

Watchmoor Park
Camberley
Surrey
GU15 3YL

tel: 01276 686222

4 Station Road
Aldershot
Hampshire
GU11 1HU

tel: 01252 322451

3&4 Market Place
Wokingham
Berks
RG40 1AL

tel: 01189 774045

www.herrington-carmichael.com