



# Asset Protection Trusts – do they work?



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These trusts are much-marketed and in the news at the moment. How do they work? Do they work?

The thinking behind them is to protect hard-earned houses and savings from being exhausted in the payment of care fees. The idea is to preserve assets so that they can be inherited by a younger generation.

Any lawyer involved in such a scheme must first ask themselves 'Who is my client?' and then ensure that they act in their client's best interests. This includes ensuring that there is no conflict of interest between the various family members. .

An 'Asset Protection Trust' (sometimes known as a 'Family Protection Trust') is usually a traditional discretionary or life-interest trust and is created by someone in their lifetime.

Great care must be exercised, as placing assets in such a trust can be treated as 'intentional deprivation' and this can lead under National Assistance and other state benefit legislation to the disentitlement to state benefits which would otherwise be available.

The question of the purpose behind such 'deprivation' is relevant. It need not be the dominant purpose but it must be a 'significant operative purpose'. The Local Authority has discretion as to whether and how to apply the rule. The effect of an adverse decision is that the person is treated as still owning capital in excess of the capital-disregard limit (currently £23,250). The marketing literature of the organisation selling the scheme is taken into account and this can be 'fatal' to the success of the scheme.

Is there tax to pay? There can be immediate Inheritance Tax consequences on the transfer of the assets into any trust, especially if the value takes the total gifts made by the individual in the past 7 years to over £325,000. If the person creating the trust continues to live in the house placed in trust or to benefit from other assets in the trust then the assets will still be assessable within their estate in the event of their death (under the Gift with Reservation of Benefit provisions for Inheritance Tax purposes). There is also a risk of losing the Capital Gains Tax relief available on a principal private residence as the assets will no longer belong to the person living there.

Oddly, the aim of saving of Inheritance Tax is a reasonable excuse for giving away assets which will not necessarily mean that a person is treated as having intentionally deprived themselves for social services purposes.

As ever, there is nothing new or magic in these trusts and it is critical to take specialist and realistic advice

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**If you require advice on this matter please contact Miranda on 01328 710210. If you require advice on any other legal matter please telephone our Wells office on 01328 710210 or email [law@hayes-storr.com](mailto:law@hayes-storr.com).**

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