



TAX TREATMENT

- Assets passing into a Right of Occupancy will be chargeable to Inheritance Tax unless the Occupant is an exempt beneficiary, like a spouse.
- Providing a non-spouse with a right of occupancy may lead to double payment of inheritance tax on the property. The occupant, even if not the owner, is considered for inheritance tax, so it may make their otherwise small estate tip over the nil rate band and become taxable. The 40% tax would be apportioned between the trust funds and the free estate of the Occupant.
- Upon the first death after Probate has been completed the deceased share of the property must be vested in the Trustees names on HM Land Registry, once registered the Trust must then be registered on HMRC Trust Registry.

CONTACT US

0330 056 2181

PM House, 250 Shepcote Lane,
Sheffield, S9 1TP

enquiries@pm-law.co.uk

www.pm-law.co.uk

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Right of Occupancy Trust



A Right of Occupancy Trust in a Will allows the testator to grant a beneficiary the right to occupy their share of the main residence. The Occupant can have a lifetime interest or occupancy limits. The Occupant enjoys the property without ownership. When the Occupants rights expire the property passes to the remainderman and the specified beneficiaries.



IN WHAT CIRCUMSTANCES WOULD YOU ADVISE A RIGHT OF OCCUPANCY?

One of the most common reasons for the use of a Right of Occupancy is to protect against what is known as 'sideways disinheritance'. Sideways disinheritance is simply, the act of the surviving spouse/partner remarrying or recoupling and deciding to change their Will in favour of their new spouse/partner. This could result in the intended beneficiaries of the deceased, often their children, receiving less or even no share of the property at all.

Another reason to consider the use of a Right of Occupancy is if you have expressed concerns over asset preservation should you require long-term care in the future.

Many clients' are property rich and cash poor and their largest asset is the property in which they reside and this is often something they want to preserve to maximise the inheritance passed to their chosen beneficiaries. The Trust offers protection following the 'first death' by passing the deceased's share of the property into trust rather than directly into the estate of the survivor. This means that if the survivor requires long-term care in the future then they do not have the deceased's share of property calculated as part of their wealth, but they do have a lifetime interest in it so they can enjoy it as if it is their own.

KEY FEATURES OF THE RIGHT OF OCCUPANCY

- The Right of Occupancy provides a right to reside in the main residence or a share of the main residence for the chosen 'Occupant.
- At least two Trustees are required. Careful thought should be made as to who may be the most appropriate as they will have to work harmoniously with each other and the Occupant. The Occupant can also be a Trustee.
- The Occupant never owns the property held in trust absolutely and has no rights to dispose of the property.
- The property held in trust is guaranteed to pass to the 'remaindermen' beneficiaries who are named in the Will which created the Right of Occupancy Trust.
- The occupant may have limited occupation within the property dependant on the trust terms. Surplus cash from this can be held in trust until occupancy ends or the occupant's death.
- Consideration should also be given to trustees' relationships with one another.