

Estate planning in the context of blended families can be challenging.

If “simple” wills are made, leaving the whole estate to the surviving spouse, with the surviving spouse then leaving the whole estate to “both sides” of the family, there are a number of risks that can be of great concern.

What if your surviving spouse enters into another relationship?

What if your surviving spouse spends all the money?

What if your surviving spouse changes their will, leaving your “side” of the family out?

What if your children challenge your estate?

These risks can be mitigated by making wills that create a Flexible Life Interest.

What is a Flexible Life Interest?

These Wills create flexible life interests in your principal place of residence for the benefit of your surviving spouse. This means that your spouse can use your interest in your home during their lifetime whilst preserving your interest in your home for the ultimate benefit of your children. This aims to strike the right balance between making proper provision to cater for your spouse during their lifetime whilst protecting your children’s inheritance. If done correctly, these types of wills can prevent claims against your estate by your surviving spouse or your children. See [here](#) for more information regarding these types of claims.

Your spouse’s ability to use your interest in your home (or a property in substitution) is usually conditional on your spouse paying the outgoings, such as insurance and rates and keeping the property in a reasonable state of repair. Your executor(s) may pay these expenses if there are funds available in your estate to do so.

What are the benefits?

At the request of your surviving spouse, your executors have wide ranging powers to provide your spouse with comfortable and appropriate accommodation during their lifetime in various forms to suit their future needs.

This could include selling your interest in the property and purchasing or renting a substitute property or acquiring a right to occupy accommodation in a retirement village or nursing home for your spouse. In practice, this would often involve your spouse using their share of the proceeds of sale to contribute towards the acquisition of a subsequent property.

Your executor(s) will become the registered proprietor(s) of your interest in your property and any property purchased in substitution and will hold that property on trust for your spouse's use during their lifetime and will also monitor the conditions of occupation. This means that your children's interest in the property will be safe guarded by your executor(s).

What are the drawbacks?

The main drawback is a loss of autonomy for the surviving spouse. If they wish to relocate, they are entitled to do so, but they will need to liaise with the executor(s) of the deceased spouse's will. It is therefore important that the executor(s) have the ability to maintain a working relationship with your spouse.

These types of Wills are also only effective if your home is owned in your sole name or as "tenants in common". If you own your home "jointly" it will need to be changed to a tenants in common ownership, with the effect that each spouse owns a specified share of the property, which would normally be 50% each. This can be done relatively easily but an additional cost is involved.

If your home is mortgaged and there are insufficient funds in your estate to pay out the loan, the operation of the life interest may be compromised.

Other Options

Life interests and other types of trusts come in a variety of forms.

Life interests can be limited to your current principal place of residence and terminate if your surviving spouse wishes to relocate. This can be sufficient if your spouse has enough resources in their own name to relocate comfortably.

Life interests can be created that allow the surviving spouse to relocate, but only if it involves the purchase of real property. This allows your children's interest in your estate to be protected in the form of "bricks and mortar" and will mitigate the problem of "diminishing returns" that may be associated with other types of accommodation, such as nursing home bonds.

Other types of trusts can be established, which can hold other assets for the surviving spouse's benefit during their lifetime, whilst preserving a fund for your children. Testamentary Trust Wills can also be incorporated. See [here](#).

Some couples may have children to previous relationships but may have also have children together. These families can also benefit from different forms of life interests and trusts.

Accredited Specialist

It is important that you obtain the right advice in estate planning. Our Accredited Specialist in Wills and Estates, Manny Wood has the expertise to help you navigate the difficult terrain that is traversed when planning for blended families.