

Equity Release

Update

April 2010

Trusts - A hindrance on Equity Release

There are a number of circumstances where you may think that Trusts can prevent equity release schemes proceeding - but don't forget there is usually a solution! Listed below are the "typical" scenarios that we at Ashfords have encountered:

1. Both borrowers are living with Trusts contained in their Wills. In this situation the Equity Release can still go ahead because the Trust is only activated on death. The Borrowers should be advised to speak to a specialist solicitor as inevitably the Will Trust will be affected by the equity release, the Will Trust generally can still be left in the Will but they need to check as there are a number of types of Trust.
2. The surviving spouse has been left a life interest in the deceased spouse's half of the property - the client in this situation only owns half of the house. Provided that the survivor and the ultimate beneficiaries of the deceased's half all agree this trust can be broken (at the same time as the equity release proceeds). The only occasion this has not proved possible is when step-children are ultimate beneficiaries.
3. The deceased spouse created a tax saving trust (known as a discretionary trust) by their Will. Again, this Trust can be unpicked, but in this case, only if the Trustees agree. They would of course be mindful of the family. Termination of this Trust could also be carried out during the normal progress of the case. Provided that the borrower is aware of the tax implications of breaking the trust this generally does not cause many problems.

As mentioned in last month's newsletter often there is a restriction on the deeds evidencing a trust but the legal formalities have not been put in place - such as Grant of Probate, and in many cases the clients do not even recollect there is a Trust in their deceased spouse's Will!

Trusts and their interaction with Equity Release is a specialist area and Ashfords Equity Release Department offers years of experience in both areas and we are always happy to speak to you at any time if you have any queries in relation to the peculiarities of a particular case and whether it can proceed.



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