

# FAMILY PROTECTION FOR COHABITING COUPLES

## LIFE ADVISORY SERVICES

**We advise that your client seeks professional tax and legal advice as the information given is a guideline only and does not take into account your client's particular circumstances.**

When putting in place 'family protection' cover for your cohabiting clients there are two things to consider:

- Who the sum assured is intended for?, and
- How will that sum assured be taxed?

### **Who receives the benefit?**

When structuring family protection for non-married couples it is important to remember that cohabitants have no automatic rights to their deceased partner's assets under the Succession Act. So if your cohabiting clients have no Will in place, the proceeds of a life assurance contract could end up in the hands of the deceased's 'next of kin', their parents or brothers and sisters, if the arrangement is not structured correctly.

### **Let's take an example.**

David and Sarah are living together in a house they purchased jointly. They have mortgage protection cover for their loan and they feel their other life assurance protection needs are covered as they both have existing 'own life' life assurance plans.

On David's death the mortgage protection plan pays off their loan.

As joint owner, Sarah inherits their family home, but as she owns an apartment with her sister she is not eligible for family home relief. She is not concerned however as she is going to use the proceeds of David's old life assurance plan to pay her Inheritance Tax bill. David did not leave a Will.

As his cohabiting partner Sarah has no rights to any of David's assets under the Succession Act so the death benefit from David's life assurance plan is actually paid to his parents, as his next of kin.

### **Will the benefit be taxable?**

With the possible exception of the family home, the total value of all assets passing between two people who are not married or civil partners of each other are liable to Inheritance and Gift Tax, regardless of how long the couple are living together. This includes the value of any life assurance benefits. So, where a cohabiting partner inherits other property, including a death benefit under a life assurance plan, the €16,250 stranger threshold could easily be exceeded. This could have a significant impact on the sum assured received from a life assurance plan.

Whether or not Inheritance Tax will have to be paid will be decided by two things:

- Who will receive the plan proceeds on death (the beneficiary)?
- Who paid the premiums on the plan?

If the beneficiary did not pay the premiums, or if the beneficiary is not the legal spouse or registered civil partner of the person who paid the premiums, the plan proceeds will be liable to Inheritance Tax.

From a tax perspective 'partners' are treated as 'strangers' for Inheritance Tax purposes with a threshold of only €16,250 (currently) tax free. The balance is currently taxed at 33%.

Arranging life cover on a single life "life of another" basis will avoid any potential liability to inheritance tax **but only where the proposer actually pays the premium. It will also ensure the proceeds are paid immediately to the plan owner / proposer.**

Where there are children of the current or a previous relationship there can be confusion over who the proceeds of the life assurance contract will be paid to, as well as how the proceeds will be taxed. Hopefully the following examples will assist with this.

#### **Example 1**

David and Sarah are not married to each other. Neither of them has previously been married. They have two children together. They set up a dual life, Life Term plan with a term of 15 years until the children are both over age 21.

##### **Who receives the plan proceeds?**

As they both jointly own the plan any sum assured will automatically be paid to the survivor in the event of the death of one of them.

If both of them were to die during the term of the plan the second sum assured will be paid in accordance with the Will of the last person to die. If there was no Will in place the Succession Act will determine who the sum assured should be paid to. In line with the Succession Act their children would inherit the plan proceeds.

##### **Will Inheritance Tax have to be paid?**

As David and Sarah are considered strangers for Inheritance Tax purposes any sum assured paid from the plan is potentially liable to Inheritance Tax. If the premium for the plan came from their joint account then the survivor will be taxed on 50% of the benefit.

The children are entitled to the children's threshold (currently €335,000) in respect of Inheritances from either David or Sarah.

#### **Example 2.**

Paul and Emma are not married to each other. They have one child Ann. Emma was married before but is divorced. Paul was never married. Emma has two children from her previous marriage (Tom and Rose). They set up a dual life, term assurance plan with a term of 20 years.

##### **Who receives the plan proceeds?**

As they both jointly own the plan any sum assured will be paid to the survivor in the event of the death of one of them. If both of them were to die during the term of the plan the sum assured will be paid in accordance with the Will of the last person to die. If there was no Will in place the Succession Act will determine who the sum assured should be paid to. If Emma was the last to die, then the sum assured will be divided between all three children, but if Paul was the last to die only Ann would be entitled to receive the plan proceeds.

##### **Will Inheritance Tax have to be paid?**

As Paul and Emma are considered strangers for Inheritance Tax purposes any sum assured paid from the plan is potentially liable to Inheritance Tax. If the premium for the plan came from their joint account then the survivor will be taxed on 50% of the benefit.

**All three** children are entitled to the children's threshold (currently €335,000) in respect of Inheritances from Emma but only Ann is entitled to this threshold in respect of an inheritance from Paul if he were the last to die. **Tom and Rose** would be considered "strangers" in relation to an inheritance from Paul if he was the last to die and a threshold of only €16,250 currently will apply.

For further information on how to structure life assurance arrangements for your cohabiting clients please see our various documents on this topic.

The legal and tax information included in this technical guide is currently correct but is subject to change. The examples included in this document are not based on any real individual circumstances and should not be constituted as advice in any particular instance.

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LAS (10/19)

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