Maintenance payments on separation or divorce – 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 cover in place to provide for maintenance payments as a result of a Divorce Decree or Separation Agreement there are various ways of structuring the life assurance contract to ensure it is in line with the requirements of the legal agreement.

How you set up the contract will depend on two things;

- Who needs to have ownership of, and control over, the contract during the lifetime of the life assured, and
- Who needs to receive the death benefit on the death of the life assured / who is to be the beneficiary of the sum assured on the death of the life assured.

Let's take an example:

Conor has separated from his wife Julie. As part of their Separation Agreement he has been instructed to put cover in place to provide maintenance payments for their two children, Emma and Sophie, in the event that he dies before they finish full time education.

There are two options for how to structure this cover

- **Own life in Trust**
- **Life of Another**

Own life in Trust

Conor effects a single life term assurance protection plan using a single life Flexible Trust Form. He is the life assured and the Settlor Trustee on the contract during his lifetime. His two children, Emma and Sophie, are the beneficiaries of the contract under the Trust. Conor pays the premium on the contract.

Ownership / Control

Conor owns and controls the contract during his lifetime. Any alterations must be authorised by Conor and notification of any unpaid premiums will be issued to Conor.

Who receives the benefit

On Connor's death the sum assured is paid to the nominated Trustee, for the benefit of Emma and Sophie as beneficiaries under the Trust. As Conor paid the premium on the contract the girls will be subject to Inheritance Tax on the sum assured.
Assuming they inherit nothing else from their father they will each be able to avail of the Group 1 tax free threshold of €225,000 (December 2012) before they have to pay inheritance tax.

Important note: A contract issued in Trust cannot be assigned to a bank as security for a loan.

Life of Another

Conor is the life assured under a single life term assurance plan with Julie as the proposer / policy owner. Conor pays the premium on the contract.

Ownership / Control

Julie owns and controls the contract. Any alterations must be authorised by Julie and notification of any unpaid premiums will be issued to Julie.

Who receives the benefit

On Connor's death the sum assured is paid to Julie directly as she is the proposer / policy owner. She can then use the sum assured to provide for her two daughters. Even though Conor paid the premium on the contract, because the policy was set up in line with a Separation Agreement, Julie will not be subject to Inheritance Tax on the policy proceeds.

As you can see both structures ensure that there are funds in place to provide for Emma and Sophie. The main differences are around who owns and controls the contract and who the death benefit is paid to.

The correct structure will depend on what is stipulated in the legal agreement.

For further information on putting cover in place for your cohabiting clients, together with information on the legislative and taxation changes resulting from the Civil Partnership Act and Finance (No3) Act please refer to our various documents on Bline on this topic.

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.

Information is correct as at December 2012 but is subject to change.