

Top tips for trusts

What is a trust?

A trust is a legal term to describe ownership of property, investments or other assets by one or more people (trustees) or a trust corporation, for the benefit of other people (beneficiaries).

Sometimes trusts come into existence because of circumstances, for example a person will look after property, money or assets for the benefit of another person until they reach a specified age. They can be set up without a formal legal document but generally trusts are created by a legal document referred to as a Trust Deed. A Trust can also be set up by a Will, these are typically referred to as a Will Trust and will only come into force upon the death of the testator (the person who made the Will).

There are many different types of trusts that can be put into place, below are some examples of different types of trusts and what they do:

- A life interest trust is used to provide a beneficiary with the right to receive income from the trust during their lifetime. Upon the beneficiary's death, the assets that are left in the trust are inherited by other people or organisations (including charities) that the person who set up the trust chose at the time of setting up the trust.
- A discretionary trust is a trust where no individual person has any right to receive income or capital, but it is left to the trustees to decide who to benefit (out of a given list of beneficiaries), when to benefit them and to what extent.
- A bare trust (similar to nominee ship) is where trust property is held by a trustee or nominee, but it is really the absolute property of the beneficiary, who can require the trustee to transfer the trust property to him or her at any time. An example of this is where grandparents hold money for grandchildren in a bank account.

You may have heard people refer to a "disabled persons trust". This is a generic term and it is possible for a disabled persons trust to be one of the types of trust outlined above. It is also possible for the disabled person to put assets into a trust for their own benefit.

What to consider when setting up a trust

When creating a Trust you need to:

1. Establish whether the Settlor (the person creating the trust) is able to set up a trust

To be able to create a trust, a Settlor must have mental capacity and be over the age of 18. A trust can be set up for the benefit of an individual under the age of 18.

2. Consider what type of trust would be beneficial for the Settlor and their beneficiaries

When making this decision, two main factors are considered. Firstly, the rights that the Settlor wants to give the beneficiaries. These rights may be:

Secondly, how the trust will be taxed when the Settlor creates the trust and during the lifetime of the trust. There are three types of tax that are considered when advising on what type of trust is required:

- Inheritance Tax – this is a tax on the value of the trust fund and is generally paid every 10 years or when assets leave the trust;
- Capital Gains Tax – this is a tax on any increase in the value of the trust's assets and is paid when trust assets that have risen in value are sold; and
- Income Tax – this is a tax on any income generated by the trust's assets (for example interest on bank accounts and dividends paid on shares) and is paid in January and July each year.

3. Who will be the trustees?

The Settlor should choose trustees whom they trust as they will be managing the trust in the best interest of the beneficiaries. Therefore, a Settlor will need to decide whether they would prefer to have family members appointed as trustees or if that is not possible, whether they would prefer to appoint professionals (professional advisor or trust company). Professionals will generally charge a fee for this service. A Settlor may also them self be a trustee.

A Settlor will also need to consider how many trustees are appointed and usually around two to four trustees will be appointed. Once the trustees have been chosen, the Settlor will need to decide whether they must act unanimously or whether decisions are made by majority.



4. What will be the trust assets?

A trust cannot exist without assets. If a Settlor wants to create a trust, the Settlor must transfer one or more of the assets to the trustees.

Examples of assets that you may wish to transfer to a trust include: cash, stocks and shares and property. A property can be transferred to the trustees for the disabled beneficiary to live in, either alone or with other people.

5. Trust Documentation

A legal document that creates a trust is usually referred to as a Trust Deed. There are certain circumstances where the legal document is referred to as a Declaration of Trust.

A Trust Deed or Declaration of Trust will appoint the trustees and state the terms of the trust, this will include the names of the beneficiaries and the property that shall be held in trust. Although the Trust Deed or Declaration of Trust is the legally binding aspect of the trust, there are other documents you may wish to consider drafting or obtaining to have stored with the Deed, these documents may include:

- A letter of wishes which may contain guidance from the Settlor to the trustees. This guidance is not legally binding but will provide the trustees with the Settlor's wishes;
- Asset transfers which may be required when the Settlor is transferring the trust assets to the trustees. An example of this would be transferring a property in the names of the trustees or opening a new bank account in the name of the trustees and transferring cash into that bank account
- Documents related to particular assets i.e. property deeds;
- Documents or forms needed to confirm the identity of the Settlor and trustees.

6. How does the trust end?

The trust may come to an end:

- At the end of the trust period – private (non-charitable) trusts can last up to 125 years by law
- When a triggering event occurs. With a life interest trust for example, the trust may stipulate that when the disabled person dies, the trust comes to an end and the assets in the trust are then inherited by other beneficiaries. Upon the death of the disabled person, the trust will automatically end.
- By the trustees exercising powers given to them. Sometimes the trust will give the trustees powers to terminate the trust early. The trustees may in some circumstances terminate a trust early if it is no longer needed. This is less likely to be the case with a trust for a disabled person.



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