Trusts

Helping to protect your assets

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What is a **trust?**

A trust is an arrangement where money, or other assets, are transferred to a group of people whose role is to manage those assets and ultimately use them for the benefit of others. They can be created during a person's lifetime, or on death if contained in a Will.

The person who sets up the trust is called the 'settlor' (or 'testator' if created by Will), the 'trustees' are the individuals instructed to manage it, and those who benefit are called 'beneficiaries'.

The settlor chooses what assets form part of the trust, and who the trustees and beneficiaries should be.

Why use a **trust?**

Trusts are used for a range of reasons, but for individuals, they most commonly assist in arranging their family's financial affairs.

In some instances, a trust might be used to help preserve family wealth or safeguard assets for younger generations. In others, a trust might help to protect assets for individuals who are particularly susceptible to being taken advantage of. They can also help manage assets for someone who does not have mental capacity, or who has a particular disability which means they find it difficult to manage assets themselves.

Whatever the reason, a trust can help give the settlor control over the future use of assets which form part of the trust.

Duties of the **trustees**

Amongst others, trustees are under a strict legal duty to act with care and in a way that's in the best interests of the beneficiaries. This means that trustees must comply with the terms of the legal documents which create the trust, appropriately invest the trust assets, act impartially between the beneficiaries and keep clear records.

Unless the rules governing the trust state otherwise, trustees must not benefit from their position, make a profit, or purchase property without the beneficiaries consent.

The duties of a trustee are amongst the most onerous and important of any duties imposed by law. If trustees misuse trust assets, act improperly or otherwise fail to comply with their duties, they will be personally liable for any loss to the trust.

Tax and **trusts**

Different types of trust attract different tax treatment and may require tax returns. A trust can be taxed at the point it is created, during its lifetime, and when assets are transferred from the trust to beneficiaries or the trust is otherwise brought to an end.

The tax payable on trusts can include income tax, inheritance tax and capital gains tax. Depending on the type of trust created, some can also be subject to additional, specific tax charges based on the value of the trust assets and the length of time those assets are held within the trust.

Frequently asked questions

Q. How do trustees make decisions?

Unless the legal documents which create the trust state otherwise, trustees must make unanimous decisions.

Q. Can a trustee retire from acting?

Normally, a trustee can retire from acting if his or her co-trustees consent and at least two trustees remain in place following the retirement. As with any change to the composition of trustees, formal legal documents must be drawn up and signed to give effect to this.

Q. Are there different types of trusts?

Yes. Some trusts can be discretionary in nature so that your trustees have power to decide how to use the trust assets, and can choose who should benefit and how. Others can be non-discretionary, enabling you to specify how the trust assets should be managed and who should benefit from them and any income they produce. This is by no means exhaustive. Your personal circumstances and objectives will help determine the type of trust you might consider creating.

Q. Can a settlor also be a trustee?

Yes, but they remain subject to the strict legal duties imposed on all trustees. As such, a settlor must recognise that in their capacity as trustee, any decisions they make must be in the best interests of the beneficiaries and not themselves.

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