Making a trust – when, why and how

A trust is a legal arrangement where one or more people or a company (called the trustees) controls money or assets (called the trust property) which they must use for the benefit of one or more people (the beneficiaries).

Imagine you asked a friend to look after some of your money, so they could use it to pay for your care if you got ill. If you just gave them the money straight out you couldn't be sure that they'd use it properly. They could spend it on whatever they liked. So, instead, you can set up a trust. With a trust, the money has to be used according to rules you set out.

In the example above, your friend would be the trustee, your money would be the trust property, and you'd be the beneficiary – the person who benefits from the trust.

You can put money, investments or other assets into the trust. Depending on the type of trust you use, it may have to pay tax and the trustees may need to complete tax returns.

When you might use a trust

Trusts have been used by families for almost 1,000 years and give control, protection and flexibility.

You might set up a trust:

- to support someone who can't manage their money, so that their needs are looked after, even when you aren't able to help them
- to make sure that your own money is used to look after you if you can't look after yourself
- to make a gift to your heirs but with certain conditions attached to it

For example, a trust can be useful if you have a child with a mental health condition or learning disability and you're worried about how they'll manage financially after you die.

Trusts can also help someone who has received compensation following a personal injury claim. If the compensation is held in a trust, it can be used to pay for therapy or other things the injured person needs without affecting their entitlement to means tested benefits.

Trusts are also often set up to help children, grandchildren or other close relatives. For example, you might want to set money aside to help a niece with her future university expenses but not with funding a holiday in Ibiza. A trust is the ideal way to specify this.

What types of trust are there?

There are various categories depending on how the income or benefit (dividends, interest, rents, free use of property and so on) is to be dealt with.

- **Interest-in-possession trusts:** This is where the income (or a similar benefit such as the right to live in a property) must be given to a specified beneficiary – it is theirs by right. There may be more than one beneficiary but they will all have a fixed entitlement. Sometimes called a fixed interest or life interest trust, these are often used in a will when someone dies leaving a surviving spouse. For example…" income to my wife for her life and after her death capital to my children".
- **Discretionary trusts:** Benefits are allocated at the trustees' discretion to any one or more of several beneficiaries. The trustees could even decide, for a time, to benefit no one and accumulate the income for future use. This type of trust could be used, if for example, you want to benefit not only your existing grandchildren but also any born after your death. These trusts give flexibility, can last up to 125 years and can be tailored to suit your aims.
- **Discretionary will trusts:** Just as a discretionary trust can be created to start in your lifetime, it can also be a feature of your will, becoming effective only on your death.

- **Charitable trusts:** To have more control over your giving, you can create a charity in your lifetime or a charitable trust on your death and gifts to such trusts are fee of capital gains tax and inheritance tax.

- **Vulnerable person's trusts:** You can set up special trusts for the benefit of disabled beneficiaries.

This list is not exhaustive – there is also the protective trust, the marriage settlement and the bare trust.

How to set up a trust

The legal wording of a trust needs to be precise and setting one up can be expensive although some charities have schemes where they contribute towards, for example, the parents' costs of setting up a trust for a disabled child.

You need to choose people you know you can rely on to be your trustees. These will usually be family members or close friends but could also be professional trustees such as your solicitor and/or accountant. Think carefully about whom to ask and make sure that they are happy to take on the responsibility, which can last for a number of years. Professional trustees will charge for their services but will have relevant expertise and can act impartially. You should have at least two trustees but probably no more than three or four.

For further information please contact:

Mary Harty is our Trust expert and can be contacted at **mary.harty@wards.uk.com** or on 01179 292811.

July 2022