

Trusts

What is a trust?

In simple terms, a trust is an arrangement where you formally give assets away but the intended recipients do not actually receive the assets. Instead those assets are managed or looked after by trustees (people you nominate to look after the assets) for the benefit of the intended recipients (known as the beneficiaries of the trust).

If you still wish to retain some element of control over the assets then you can nominate yourself as one of the trustees.

The trust can be as flexible as you wish to make it. You can set up a trust either during your life or you can make provision for a trust in your will.

Who can be beneficiaries of the trust?

The beneficiaries of your trust can be family, friends or even your favourite charity – the decision is entirely up to you.

Why set up a trust?

Trusts are set up for one or both of the following reasons – to save tax or for family reasons.

Taxation: By transferring assets into a trust you can reduce the value of your estate and therefore your exposure to inheritance tax (IHT).

If you set up a trust for your family you can gift assets to the value of the IHT nil rate band into a trust every seven years and these sums will fall out of your estate for inheritance tax purposes provided that

- You survive seven years from the date of the gift, and
- You exclude yourself from any benefit from the trust.

If the beneficiaries of your trust are charities rather than family, you can leave whatever assets you wish to your favourite charities tax free.

Family reasons: Setting up a trust can be the solution to certain family predicaments. For example, you want to gift assets to your children or grandchildren so that funds are available to them to buy a house or pay school fees etc but due to their age, level of maturity or inability to handle money you don't feel comfortable with them having control of the funds. That money earmarked for education or a first property could end up funding a flashy car, exotic holiday or designer wardrobe! A trust gives you peace of mind and control over when they receive the money and how much they get.

You don't have to set up a trust during your life. You can also set up a trust under your will. For example, if you want to ensure that your children inherit your assets but you want your spouse to have the benefit of the assets without having outright control during their life, you can set up a trust in your will. These trusts are commonly referred to as *liferent trusts* and can ensure that even after your death your assets will ultimately pass to your children.

What types of trust are there?

Most trusts fall into one of two main types.

Liferent trust: This type of trust can be used where you want someone, for example your spouse, to benefit from the income from your assets, or to be able to use your assets, but you do not want them to have an outright entitlement to the assets. Instead the assets will ultimately pass to others, for example your children.

Discretionary trust: The main feature of this type of trust is that your trustees have the discretion to make payments to your chosen beneficiaries.

Is a trust right for me?

A trust can be a very useful tool if you want to reduce your potential inheritance tax bill, or you want to provide for your children and grandchildren but you don't want to give them the assets outright.

We can help

We can advise you on whether a trust is right for you and what type of trust you should set up to meet your objectives. A trust is a very flexible vehicle and with the right advice can easily be tailored to meet your particular needs. We can also advise you on the tax position of the trust.

This Information Sheet is based on Scottish law. If you live in England or Wales, our English law team can help you ensure your power of attorney meets your needs.

For further information on these or any other personal law issues, please contact:

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