

TRUSTS AND TRUSTEES

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What is a Trust?

A Trust is created when you (the Settlor) make financial provision for someone else (the Beneficiary) and for a variety of reasons the Beneficiary cannot access the money (the Trust Fund) themselves. The following are common situations where a Trust arises:

- Nora (the Settlor) dies and leaves £500 to each of her grandchildren Peter (age 21), Adam (18) and Lucy (4) (the Beneficiaries). Her daughters Susan and Jane are the Executors of Nora's Will. Peter and Adam (having reached 18) can receive their inheritance immediately. Susan and Jane (the Trustees) will need to invest Lucy's money (the Trust Fund) until she is 18.

If Nora had specified the grandchildren should not inherit until they reached 21, the money due to both Adam and Lucy would be held 'in trust' until they reached that age.

- John is quite wealthy. He wants to make sure his second wife Connie is looked after financially after his death, with everything passing to the children of his first marriage when Connie dies. He sets up a Life Interest Trust under his Will. Connie will be entitled to the income (bank interest, property rental income, share dividends etc) from the Trust Fund during her lifetime but cannot spend the capital of the Trust Fund itself.

- Sam dies without leaving a will, with assets of £280,000 in his name. He has a wife and three young children. This results in two trusts being automatically created. His wife Anne receives £250,000 under the intestacy rules, the remaining £30,000 is divided into two. Half is divided equally between his children who cannot inherit until they reach the age of 18, so will be held 'in trust' for them until they reach that age.

The other half is held on a life interest trust with Anne entitled to all the income for the rest of her life. On her death the capital from that share is also divided between the children.

- With a house worth £300,000 and other assets totalling £600,000, Jeff and Karen realise there will be a large Inheritance Tax bill on their deaths. They decide to put aside £100,000 to benefit their grandchildren and immediately set up a trust. Neither Jeff nor Karen can use that £100,000 for their own benefit in the future. If they live for seven years after setting up the trust, the gift is not taken into account on their deaths when calculating how much Inheritance Tax to pay. As both of them will have good pensions when they retire, they want to implement further tax planning schemes under their Wills by using a Discretionary Trust which would only come into effect when they die.

There are other forms of trust but the above are the ones most commonly encountered.



Trustees

Trustees play a very important role in running a Trust. The trust assets (property, money, shares and other investments) are legally held by the Trustees. It is therefore essential that those appointed to act in this role are carefully chosen.



Who can be a Trustee?

The Settlor can appoint anyone – including himself (but this may have tax consequences) and/or any Beneficiary – to be a Trustee. It is usual (but not essential) to have between 2 and 4 Trustees.

The Settlor will need to be sure that any proposed Trustee:

Is honest – the Trustee may be handling large sums of money held in his own name

Will take advice – the Trustee Act 2000 imposes a requirement for Trustees to take professional advice

Has time to carry out his duties – regular reviews of investments need to be made; annual tax returns must be completed and there may be requests from beneficiaries for cash advancements which may need to be considered

Can act impartially – when decisions may need to be taken which concern the possible conflicting interests of two different beneficiaries



Duty of Care

All Trustees must act with a duty of care to:

- Safeguard trust assets
- Distribute to those entitled
- Provide accounts and give information to beneficiaries
- To act in the best interests of the beneficiaries
- When appointing agents and reviewing arrangements with agents (eg to manage a Trust Fund)
- When making investments, insuring trust property, or acquiring land

It is important to note that a non professional Trustee usually cannot be paid for acting as a Trustee, although expenses ‘properly incurred’ can be reimbursed. Expenses would not normally include loss of wages.

A Trustee cannot make a profit from his position as trustee – for instance he cannot personally make a loan to a trust, nor invest trust money in a business owned by him.

The Trustee must always act in the best interests of the Trust



Are all Trusts treated the same?

In principal, yes. The same duty of care applies, although how the Trustees apply this duty may vary according to the nature and size of the trust.

For instance, in the first example given overleaf if Nora had left £50,000 to her grandchildren rather than £500, much more detailed advice would need to be sought before making investments. The ages of the beneficiaries, and the likely length of time the trust is to run, would also be a factor to take into account.

Trusts are subject to special tax rules and treatment

It is always wise to come and see us for advice before steps to implement the trust are taken. Please contact Mr J D Kitchen, Mrs D K Ryan Mrs C M P Watson or Mrs K M Smith on 01636 703333 for assistance in either setting up or administering a trust.

This pamphlet is intended as a general guide only. Our advice should be sought on specific issues.

