A Guide to Making a Trust

one in a series of comprehensive guides to assist you in managing your affairs

Wills, Trusts & Probate

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What is a trust?

A trust is a formal transfer of assets (it might be property, shares or money) to a small group of people (usually two or three) or to a trust company with instructions that they hold assets for the benefit of others.

If the trust is to be made in your lifetime, to take immediate effect, then it is usually evidenced by a trust deed (often referred to as a "settlement"). If it is to be created on or shortly after your death then the trust rules are generally set out in your Will, known as a "Will Trust".

What does a trust do?

Whether by lifetime settlement or by Will, the trust document states who are responsible for looking after the gifted assets (the trustees), who are to benefit (the beneficiaries) and any rules or conditions which the trustees and beneficiaries must adhere to. The separation of the "legal" and "beneficial" ownership, is a unique characteristic of the trust concept as the trustees are the legal owners but the beneficial owners are the beneficiaries.

How long should a trust last?

How long a trust shall last is entirely as you think appropriate but you must stipulate the trust period in the trust document. It may be just a few years, perhaps during a person's widowhood or until a child attains a certain age or marries. A trust can last for a maximum of 125 years.

Who should be trustees

If you are creating the settlement in your lifetime then you can appoint yourself and your spouse, or whoever else you wish to nominate as trustees. If you are a trustee you can remain in control of the assets and decision making.

Why make a trust?

Throughout their history, trusts have been used to avoid or address problems in two main areas -

1) Taxation
2) Family Matters

Making a trust for taxation purposes

In your lifetime you can create a trust into which you can place chosen assets which you no longer need access to. This reduces your own wealth and thus your exposure to inheritance tax, whilst ensuring that, as trustee, you remain in control of the assets given away (unlike an outright gift).

By creating a discretionary trust in your Will for the benefit of your spouse and children, you can take advantage of the nil rate band of inheritance tax , consequently making considerable savings against tax.

Making a trust for domestic reasons

There can be many reasons for creating a trust for domestic reasons. Some examples are given overleaf.

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Example 1
You might be fearful of losing mental capacity or that your possessions will be taken over by Government Agencies or even fortune hunters.

Solution
You could place your assets (say your house) in trust for yourself for life so that only the trustees you have chosen can deal with them according to your wishes rather than the Court of Protection or Social Services.

Example 2
Parents, grandparents and others have always been concerned that children and grandchildren are at risk if they receive or inherit too much too soon.

Solution
Create a trust to hold the assets until the children are older and wiser.

Example 3
You might currently have an aged dependant – a widowed mother perhaps or retired housekeeper who would need continuing care should you die before her.

Solution
A trust can be created to hold sufficient capital to continue the help. On her death the funds can pass to your family.

Example 4
Your son or daughter might risk bankruptcy or an unstable marriage or other relationship, be disabled and in need of special care or for some other reason be incapable of managing their own financial affairs.

Solution
In any of these situations, shares, cash, property or other forms of wealth can be placed into a suitable trust carefully worded to take account of the perceived risks surrounding the intended beneficiary.

For further information regarding any of the specific types of trust mentioned above, contact one of our Wills, Trusts & Probate team on the numbers overleaf.