

## Trusts

Trusts have been used by families for centuries. An express trust usually involves the formal transfer of assets (for example, property, shares or cash) to a small group of people (usually two or three) or to a trust company with instructions that they hold the assets for the benefit of a named person or group of people. If the trust is to be made in your lifetime, to take immediate effect, then it is usually evidenced by a trust deed and often referred to as a "settlement". If it is to be created on, or shortly after, your death then the trust rules are likely to be set out in your Will. This is known as a "Will Trust".

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

A trust might last for just a few years, perhaps during a person's widowhood or until a child attains a certain age or marries, however, trusts can last for much longer with the exception of charitable trusts which can last indefinitely. It is usually advisable to give the trustees the power to terminate the trust at their discretion.

### Why make a Trust?

Throughout their history, trusts have been used to avoid or address problems in two main areas: taxation and family matters/asset protection.

### Taxation

In your lifetime you can create a trust into which you place chosen assets which you

no longer need yourself. This reduces your own wealth and thus your exposure to inheritance tax (subject to satisfying various conditions).

You could, for example, choose to settle assets in trust for your grandchildren either during your lifetime or after your death. Skipping a generation in this way reduces your children's exposure to tax.

A charitable trust created in your lifetime or in your Will can receive unlimited assets, all of which can be free of virtually all forms of tax.

### Family reasons/asset protection

Trusts have been created in this country for almost 1000 years and many of the reasons for creating trusts have not changed; here are a few:

- When parents, grandparents and others are concerned that the children and grandchildren are at risk if they receive or inherit too much too soon.
- When you fear that, by leaving your assets to your spouse outright in your Will, those assets could be spent or left to a subsequent spouse/family so that little or nothing will remain for your children to enjoy.
- If you have an aged dependant who would need continuing care should you die before him or her.
- When you have a child/grandchild who is at risk of bankruptcy, has an unstable marriage/relationship, is handicapped and in need of special care or who is, for some other reason, incapable of managing their own financial affairs.
- When you are fearful of losing mental capacity or worried that your possessions will be lost to Government Agencies or even gold diggers!

### Creating the right Trust for you

It has been said that for every family problem or situation there is a trust that can be constructed to suit the need. Creating the right type of trust to match your particular situation requires specialist help.

Whether creating the trust by Will, or in your lifetime, selecting the trust type and its terms is very important. For maximum flexibility it is usual to give the trustees wide management powers so that they are better able to respond to any changes in family circumstances or tax law. With such wide trustee powers, however, you must choose your trustees carefully.

Setting up trusts needs careful planning and specialist advice should be obtained before deciding how best to proceed.

### How can Warners help?

At Warners our experience and independent advice enables us to guide our clients through the various complexities of trusts and their use for tax planning and family reasons.

For further information please contact a member of our team.

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