



Trust Administration

A trust is a way of managing assets such as money, investments, land or buildings. There are three main parties to a trust, although each party can be more than one person:

- **The Settlor** - the person who puts the assets into the trust.
- **The Trustee** - the person who manages the trust.
- **The Beneficiary** - the person who may benefit from the trust.

The Settlor transfers assets to the Trustee (or Trustees) who then manage them for the benefit of the Beneficiary (or Beneficiaries). Trusts are used in a variety of circumstances.

A new trust can last for up to 125 years and can take a variety of forms.

Why set up a Trust?

The most common reasons for setting up a trust are:

- Controlling and protecting family assets
- Taking assets out of your estate without immediately giving them to someone else
- Protecting young or vulnerable beneficiaries
- Tax planning
- Establishing charitable funds

What are the main types of Trust?

Trusts are very flexible and can be prepared to cover a very wide range of circumstances. The exact type of trust which is required will depend on a number of factors such as the assets involved, the identity and status of the Beneficiaries and how the Settlor wishes them to benefit and tax considerations.

However, the most common types of trust are:

Bare Trust

The Beneficiary becomes absolutely entitled to all of the trust's income and capital as soon as they reach 18 years. The Trustees look after the assets until the Beneficiary reaches 18 years but must transfer everything to the Beneficiary if requested after that.

Interest in Possession Trust

The Beneficiary is entitled to all of the Trust income as it arises. The Trustees must pay any income to the Beneficiary and cannot withhold it. If the Trust property is something more tangible then the Beneficiary is entitled to use it (eg if the Trust property was a house, the Beneficiary could live there rent free). Often the benefit of the Trust property will pass to different Beneficiaries when the first Beneficiary dies. Importantly this is governed by the terms of the Trust **not** the wishes of the Beneficiary.

Discretionary Trust

The Beneficiaries do not have any specific right to income or capital from the Trust. Instead the Trustees have the discretion to make payments of income and/or capital to the Beneficiaries as they think best. The Trustees have complete flexibility in determining if and when to make payments and the amount. The sole restriction is that payments can only be made to people who are Beneficiaries. Often this type of Trust will not name specific beneficiaries but will instead define them as belonging to a certain group. For example the trust might be for the benefit of the Settlor's children and further descendants.

Pilot Trust

This can be any type of trust which is initially set up with a nominal amount of funds (eg £10) the idea being that further funds will be added at a later date.

How do I set up a Trust?

The process of setting up a trust is reasonably straightforward but you will need to decide:

- What type of trust to set up and what the Trustees' powers will be
- How long the trust should last
- Who will be the Beneficiaries
- Who will be the Trustees
- What property to put into the trust

We can advise you on these matters, taking into account your specific circumstances and objectives. Once you are able to give us full instructions we can prepare a Trust Deed for you and the Trustees to sign in order to create the trust.

You will also need to formally transfer the assets or property to the Trustees. For example for cash assets, the trustees will open a special bank account and you will then pay in the relevant funds. For assets like land or shares a formal transfer document will be required.

What if I change my mind?

Normally you cannot recover any assets which you transfer to a trust. Once you have made the transfer the trust assets belongs to the Trustees who must deal with them according to the terms of the Trust Deed. It would be unusual for the Trust Deed to allow the Trustees to transfer assets back to you.

It is therefore very important that you are sure about how you wish to proceed before you create a trust.

What about tax?

Creating a trust can have complicated tax consequences which must be explored before you proceed. You must consider both Capital Gains Tax and Inheritance Tax and make sure you are aware of any liabilities which might arise as a result of creating the trust.

Once the trust is in place it will normally be treated separately for tax purposes. The Trustees will be responsible for completing annual tax returns and ensuring payment of any tax due in relation to the trust. The Trustees will also be responsible for providing Beneficiaries with the appropriate tax certificates in relation to any distributions from the trust.

When the trust comes to an end the Trustees will need to complete a final tax return and ensure that all liabilities are settled before making final distributions to Beneficiaries.

What happens once the Trust is operational?

Once you have set up trust and transferred assets to the Trustees, your involvement as Settlor is effectively over. The trust will continue to operate with the Trustees supervising matters in accordance with the terms of the Trust Deed. The Trustees will be responsible for all of the day to day management of the trust and will often instruct professionals such as solicitors, accountants and investment manager to advise them.

Trustees can be personally liable to the Beneficiaries if things go wrong and the trust loses money. Accordingly, in all but the most straightforward of circumstances, the trustees must take appropriate professional advice. The Trustees will normally meet at least once a year to discuss the trust and to review reports from their advisers. The Trustees may meet more often than this if there are particular matters to discuss or if they need to agree on distributions to Beneficiaries.

The Trustees must keep minutes of their meetings and decisions as well as annual trust accounts in case there is ever any dispute about their management of the trust.

The Process

When you instruct us to prepare a trust, we will take the following steps on your behalf:

- Meet you to take your instructions and advise you in relation to setting up a trust and the practical and tax implications of doing so.
- Advise you in relation to potential tax liabilities.
- Prepare a Trust Deed for you and advise you of its effects.
- Arrange for you and your chosen Trustees to complete the Trust Deed.
- Prepare any necessary documentation required to transfer ownership of assets from you to the Trustees.
- Register the trust with HM Revenue & Customs.

If subsequently instructed by the Trustees we will:

- Advise the Trustees about their powers and duties in relation to the trust.
- Arrange and minute Trustees' meetings as required.
- Prepare any necessary documentation to record and give effect to Trustees' decisions.
- Make distributions to Beneficiaries.
- Advise on the procedure for ending the trust.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.