MOMENTS THAT MATTER

A guide to trusts

harrison clark rickerbys solicitors

Managing your assets can be complex, both during your life and after. You may want to gift assets to specific people or allow them to benefit from your assets, either immediately or in the future. Managing this process is crucial as there can be significant tax implications if done incorrectly, as well as the potential for substantial tax savings with careful planning. So how should you structure your assets and what do you need to put in place to manage them?

What is a trust and why would I need one?

A trust allows assets to be held and managed via a legal arrangement (by your trustees) for the benefit of one or more beneficiaries.

Trusts may be set up for a variety of reasons, including:

- Passing assets on to future generations
- Managing assets for minor or vulnerable beneficiaries
- Providing flexibility to adapt to changing circumstances in the future
- Helping to safeguard and preserve family assets in the event of care fees, divorce or bankruptcy
- Managing assets in a tax efficient manner.

Trusts can be used to protect family assets or to manage assets for someone who is unable to do so themselves, such as a minor or vulnerable individual.

Different types of trusts

The type of trust you set up will depend on why you are creating it in the first place and what the objective of the trust is. Some of the more common types of trust include:

Bare trust

This is the simplest form of trust and is often used to manage assets for young people until they are old enough to do so themselves.

Discretionary trust

This type of trust allows the people managing the trust (known as trustees) to use their discretion to decide which of the designated beneficiaries should benefit from the trust, at what time(s) and to what extent. Typically, the person setting up the trust (known as the settlor) will leave guidance to the trustees as to how they would wish the trust to be managed.

Life interest trusts

Also known as 'interest in possession' trusts, this arrangement can be used after your death to provide your surviving spouse/partner with the right to remain in the family home until their own death. On the death of the surviving spouse/partner, the property (or your share in the property if less than 100%) would pass according to the terms of the trust (which may be to children or other beneficiaries) rather than with the estate of your spouse/partner.

It is common to create this kind of trust following a second marriage or where there are children from a previous relationship as it allows assets to be preserved for your children whilst still providing for your spouse/partner.

As well as property, life interest trusts can also hold other assets (such as cash or investments) which can be used to provide the beneficiary with an income for their lifetime. This arrangement is not restricted to spouses/partners. A life interest trust can be set up in favour of any beneficiary (such as a sibling, child or friend).

Personal injury trusts

Where a person suffers a serious injury, they may be awarded a significant sum of money in compensation. A personal injury trust allows money to be managed by trustees on behalf of the injured person. This can protect the person (who may well be vulnerable) and their funds from exploitation by others and can help ensure that the person's means tested benefits remain unaffected.

Disabled persons trust

Similarly, a disabled persons trust can be used to protect the assets and preserve the benefits of someone who is legally classified as disabled.

A trust can be used to allow your spouse/partner to benefit from assets (often property but it can also include cash or other investments) after your death, whilst retaining the asset to pass on to other beneficiaries in the future.

Managing trusts

Whatever type of trust is created, it will usually need between two and four trustees to manage it. Being a trustee carries with it legal obligations including the obligation of managing the trust itself, paying tax and expenses and reporting to relevant authorities (including HMRC).

Depending on the type of trust and your circumstances, there may be tax implications of setting up the trust as well as periodic tax charges during the life of the trust. It is important that appropriate advice is taken to ensure that the correct structure is used to minimise and mitigate any potential tax liabilities.

Our team includes specialists in drafting, advising on and managing trusts. We can act as professional trustees (either through the firm's trust corporation or individual partners), supporting other trustees and helping to advise on and manage any difficult decisions which trustees may need to make. We also have tax advisors within the team allowing us to manage and advise on complex tax positions.

Our team advises on, creates and manages numerous trusts and also have a chartered tax advisor to support with complex tax positions.

To discuss your own circumstances and how trusts may help you with managing your assets, both now and in the future, contact a member of the HCR Private Client team.

Click here to contact the team

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