A GUIDE TO TRUSTS

What are trusts...

A trust is essentially an arrangement whereby one or more 'trustees' hold assets for the benefit of one or more 'beneficiaries' who are or may become entitled to receive some benefit from these assets.

Trusts frequently arise when you buy a house, take out life insurance or when you die and your assets are distributed in accordance with your Will or intestacy. You may therefore already be the trustee or beneficiary of a trust without even realising it!

..and what can they do for me?

There are a variety of types of trusts which can be tailored to offer solutions to clients with radically different needs. However, essentially, all trusts exist to protect assets in one way or another.

- As you may already be aware, trusts can be used very effectively to save tax.
- Trusts can also provide a way of passing assets to others whilst retaining an element of control. For example, a trust arrangement may suit you if you wish to start passing assets to the next generation but wish to guard against possible future claims from creditors and spouses or even your beneficiary's own misguided actions.
- A trust could be used to seek to protect assets from care home fees.
- In second marriage situations, a trust could be used to balance fairly the interests of your spouse and children after your death.
- Trusts can be used to protect vulnerable or child beneficiaries by providing funds to ensure they are adequately provided for without necessarily allowing direct access to these funds. You may even wish to use a trust to protect a spendthrift beneficiary from themselves.
- Trusts are also used to hold personal injury compensation awards to ensure your eligibility for any benefits you receive is not jeopardised.
- A trust could even be used to hold assets where you have not yet decided who should benefit from them, or if you wish to allow someone else to make the decision for you at a later date (perhaps depending upon family or tax circumstances at the time).

What are the options?

There are, broadly speaking, three main types of trust. Which type of trust is used will depend upon your personal circumstances, the tax position and your goals.

- ### Life Interest Trust / Interest in possession trust

  In this situation, the trustees hold the income of the trust assets for a beneficiary (called a 'life tenant') usually for the rest of their life. The life tenant will receive the income from any investments and could be permitted to live in any residential property owned by the trust. When the life tenant dies the capital will then pass to the beneficiaries specified in the trust document.

  You might use this kind of trust in a second marriage situation. Your spouse could, for example, continue to live in your property and enjoy the income from any investments. However, the capital is protected for the benefit of your children after your spouse's death.

  You may also use this type of trust if you are worried about care home fees as although your spouse will have the benefit of your assets, the capital may be safeguarded against paying their care home fees.

- ### Discretionary trust

  This type of trust generally gives your trustees freedom to distribute the capital and income of the trust to a range of potential beneficiaries (called 'discretionary beneficiaries') as, when and if they see fit. This type of trust is most commonly used for tax purposes or where flexibility is needed.

  You can list the potential beneficiaries yourself and, if you wish, give your trustees power to add further beneficiaries if and when they deem that appropriate.

  This type of trust is often used as part of inheritance tax saving schemes which can save many thousands of pounds and thereby protect assets for future generations. These arrangements can be put in place as part of your lifetime tax planning measures or after your death.

  We may also recommend the use of this type of trust if you own business or agricultural property to ensure that you maximise the tax reliefs available to you.

  This is the most flexible type of trust. You can provide written guidance to your trustees in the form of a 'letter of wishes' and change this as often as you wish without the need to alter the trust deed or your Will. This means you can give your trustees a clear understanding of your intentions and explain how you hope the trust will operate. Such wishes act as guidance for the trustees are not legally binding.

  If any of the below explains your position then speak to us for advice regarding discretionary trusts:

1. As part of your estate planning you may want to make a gift into a discretionary trust. It may be possible to make a gift of an asset with an inherent gain into a trust and 'holdover' any capital gains tax. We can advise you on tax effective gifts into trust.
2. If you own business or agricultural property you may wish to consider a discretionary trust to ensure that you maximise the tax reliefs available to you.

3. If you have a complex estate, with a variety of assets, a Will incorporating a discretionary trust allows you to choose executors/trustees who then have flexibility to make decisions after your death taking into account the tax, personal and other considerations at that time.
4. If you or your spouse has been previously widowed, a discretionary trust can provide inheritance tax savings opportunities which may otherwise be lost. Speak to us for more information.
5. If one or more of your potential beneficiaries is in receipt of means tested benefits then a discretionary trust might be the route to ensure that their benefits are not jeopardised by your gift.
6. If you have complex family relationships, or have not yet decided how to balance the distribution of your estate, you may want to consider incorporating a discretionary trust into your Will. This gives your executors/trustees flexibility to decide on the distribution of your estate, taking into account any claims that relatives may have, after your death.
7. A discretionary trust can be used to protect a vulnerable or spendthrift beneficiary from financial abuse or from themselves. The trustees can use their powers to ensure that such a beneficiary is adequately provided for without necessarily allowing direct access to large sums of money.
8. If one of your beneficiaries is suffering a relationship breakdown, a discretionary trust may offer a route to ensuring your assets are retained for the people you want to benefit, rather than lost in a divorce settlement. The rules relating to this can be complex so legal advice should be sought, you cannot use a trust simply to avoid assets being taken into account in any financial settlement.

- **Bare trust**

  This is the simplest form of trust. The trustees hold the legal title to property for one or more persons who are absolutely entitled to the beneficial interest in the property.

  This means that the beneficiary is immediately entitled to the capital and will receive all the income from trust assets. As these assets essentially belong to the beneficiary the assets will be taxed as such.

This guide can only attempt to illustrate some of the many ways in which trusts can be used. Our team can offer specialist advice on the creation, administration and taxation of all types of trusts big or small, new or old. So, if you are already involved in a trust or would like further information about whether a trust might be suitable for you or your family please do not hesitate to contact us.

If you think this may be relevant to you, please do not hesitate to contact the Private Client Team at Wansbroughs on 01380 733 300, or via email at wealth@wansbroughs.com.

This guide is for information only and is not a substitute for taking legal advice.