

Montpellier Guide to Trusts

In this guide we will explain exactly what trusts are, how they are used and also highlight the types of trust that are commonly used today.

What is a Trust?

A trust is the legal means by which one person known as the settlor gives property to another person called the trustee to look after on behalf of yet another individual or a set of individuals who are the beneficiaries.

What is a Settlor?

The Settlor is the person who creates the trust i.e., they transfer property into the trust. This can be more than one person, e.g., a couple jointly creating a trust for their children. It can also be a company establishing a pension scheme trust for its employees or directors.

What is a Trustee?

The trustees are the person(s) who hold the property legally for the benefit of the beneficiaries. They are the legal owners of the trust assets and are bound to hold or use the assets for the benefit of the beneficiaries.

This responsibility extends to investment and administration of the trust fund. The settlor may be a trustee, although it is not advisable for the settlor to be the sole trustee as, in the event of their death, there would be nobody immediately available to administer the trust.

The trustees would then usually be the settlor's personal representatives, but probate/letters of administration would have to first be granted before they could officially take office and act. This can cause lengthy delays!

Initially the trustees are appointed in the trust document itself with the power to appoint further trustees as and when required.

Anybody aged 18 years and over (16 in Scotland), of sound mind and not bankrupt, can be a trustee. Being a beneficiary does not preclude a person from being a trustee, although a conflict of interest could arise especially if the trustees have powers to decide the extent of beneficial interests. The settlor can be (and often is) one of the trustees.

What is a Beneficiary?

There is a division of ownership with regards to trust assets. There is a distinction between legal and beneficial ownership, which is peculiar to trust law, whilst legal title to the trust property belongs to the trustees, the beneficiaries have beneficial title to the property. Although the beneficiaries have no direct day-to-day control over the trustees during the trust period, should they discover that a breach of trust has been committed they can bring a court action against the trustees personally.

Creating a valid trust

While it is usual for the trust to be evidenced in writing, there is generally no requirement that for it to be valid, that the trust must be in a written form. There are certain fixed requirements to create a valid trust; however, it must be certain which property is subject to the trust, who are the beneficiaries, and the words used must show clear intention to set up the trust.

These are the so called "three certainties" of a trust. If any one of them is missing, for example at any time it is not possible to ascertain who exactly are the beneficiaries, the trust will fail.

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The three certainties

- Certainty of the intention to create a trust
- Certainty of who the beneficiaries are
- Certainty of the asset type

Ways of creating a trust

- Verbally
- In writing
- By actions
- By Intentions

We commonly see trusts that have been established following someone's death with the trust provisions contained within a will. While people refer to this as a Will Trust the chances are the type of trust will be one of those referenced below as three of the most common types of trust in the UK.

Types of Trust

The Discretionary Trust – this type of trust is created for a wide class of beneficiaries. The trustees follow the wishes of the settlor, but do not have to distribute assets in a certain way at a certain time. They have wide discretion over who may benefit and under what circumstances. In principle the Trustees follow the directions of the settlor which may be in the event of their death. When appointing trustees, it would always be wise to appoint those that are sympathetic to the wishes of the settlor.

Absolute Trust – An Absolute Trust is much more restrictive than a Discretionary Trust. The terms of the absolute trust are strict in that there can be no alterations once established. This means that the beneficiary, their share, and the asset may not be amended. The assets are immediately treated as an asset of the beneficiary and as at the age of 18 they may legally demand ownership from the trustees.

Life Interest Trust – A life Interest Trust or Interest in Possession Trust is a different type of trust again. This type of trust allows a fixed income to be paid to the beneficiary for life (the life tenant) for the duration of their lifetime. The trust capital is then kept for the remaining beneficiaries who will be able to access the capital on the death of the life tenant. This is very common in husband-and-wife cases on a second marriage where the new wife may benefit from the income during her lifetime, but on her death the assets revert to the children from a previous marriage.

Using Trusts to Good Effect

- Where a parent would like to make provision for their children but are concerned about the impact of the wealth affecting the child.
- Assets can be passed into a trust for the benefit of the children where the trustees will ensure that the children only benefit under certain circumstances or when they are ready to receive the money.
- Some clients direct the trustees to allow the beneficiaries income rights from day one, but only the capital when they reach age 30.
- Trusts may be used to shelter assets from tax.
- Protect assets from spendthrift beneficiaries, bankruptcy and potentially divorce.

At Montpellier Asset Management we have years of experience in establishing trusts for our clients to both safeguard their assets for future generations and also to mitigate taxes.

It should be remembered that Trusts have their place in financial planning, but there are specific rules that need to be followed in order for them to be effective!

We hope that you have found this brief guide useful. If you would like to find out how this may affect you or if you would like to learn how to implement elements of this planning within your financial affairs, then please contact us on the details below.

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