

“Many people are concerned about the prospect of setting up a trust.”



Rosalind Watchorn
Solicitors

10 Kenwood Park Road,
Sheffield S7 1NF

Tel: 0114 229 0160

Fax: 0114 229 0170

Email: mail@rwatchorn.co.uk

www.rwatchorn.co.uk

A trust is simply a way of separating beneficial ownership from legal ownership.

There are different types of trusts.

Most trusts fall into one or two main categories depending on how the income or benefit (dividends, interest, rents, free use of property etc.) will be dealt with.

Interest in Possession Trusts

These are trusts where the income or benefit must be given to the specific beneficiary.

The interest in possession trust (or fixed interest/life interest trusts) is often used in a Will when a person dies leaving a surviving spouse e.g. ‘to my wife for her life and then to my children’. Thus the widow can enjoy the assets placed in trust but is prevented from dissipating the trust capital.

Since the Finance Act 2006 interest in Possession Trusts with a surviving spouse as before are known as ‘Immediate Post-death Interest’ Trusts and along with disabled persons’ Trusts are the only Trusts that have a tax privilege.

Discretionary Trusts

Discretionary Trusts give the trustees power to make distribution of capital and/or income to a stated class of potential beneficiaries. The most common of these are the general discretionary trust and a charitable trust. The trustees might even decide, for a time, to benefit no one: the income being accumulated for future use.

All other Trusts; including Immediate Post-Death Interest in Possession Trusts (where the beneficiary is someone other than a spouse) are known as Relevant Property Trusts and are fixed in the same way as a Discretionary Trust.

There are many other questions that may need answering, and each individual case is exceptional.

Please speak to us, if you wish to explore more about using trusts.

Frequently Asked Questions

Many people are concerned about the prospect of setting up a Trust. Of course each individual will have personal questions, but as a start to the thinking process those most frequently asked questions are listed below.

Q. Can a settlor be a trustee

A. Yes

Q. Can a trustee be a beneficiary

A. Yes

Q. Can I be a sole trustee?

A. Technically yes (unless the trust holds land) but it is not a preferred option

Q. Must I appoint a professional trustee?

A. The strict answer is ‘No’, but it is recommended. It is important to be extra careful to whom you give the power and responsibly of Trusteeship and whether it is totally appropriate for a beneficiary to be a Trustee.

Q. Can a trust protect assets from divorce or bankruptcy proceedings?

A. The Courts have wide powers so protection is only available up to a point. Much depends on the terms of the trust, the timing and the purpose for which it was created. Once again professional advice is essential.

Q. How many trustees should there be?

A. Two or three are preferred, four is usually the maximum.

Q. Can I put assets into a trust but keep the income from (or use of) the assets myself.

A. The tax consequences of this are usually unacceptable as income and capital gains would be taxed as yours. On your death the trust’s assets would be added to your own estate and inheritance tax charged on the total. In certain limited circumstances however, it might be appropriate, particularly if tax is not an issue.

Q. My chosen executor/trustees for my modest estate are relatives. Is this wise?

A. If they are an adult and sensible this should not cause a problem. They will have the power to hire (and fire) professionals who would (or should) be able to advise them what to do.