

GUIDE TO TRUSTS

WHAT IS A TRUST?

A trust is a vehicle which divides the responsibility for the management of an asset from the right to use or benefit from that asset: 'trustees' manage the assets, and 'beneficiaries' benefit from them.

THE ROLE OF A TRUSTEE

Trustees make the decisions relating to a trust's administration and to the management of the assets within it: this will include, for example, making decisions about how monies are to be invested, and – depending on the terms of the trust – how assets should be used to support the beneficiaries.

TYPES OF TRUST

There are many types of trusts but the most commonly used are:

Trusts for children

The most straightforward type of trust often arises where a husband and wife provide in their Wills that if they both die, their assets are to pass to their children. If this happens at a time when their children are still under 18 (or any higher age specified in the Will), their estates will be held in a trust with the assets managed by trustees on the children's behalf until the children are old enough to do so themselves.

Life Interest Trust

This gives someone a right to receive income or use an asset during his or her lifetime, but does not give that person any say over who will inherit the trust assets after his or her death.

This type of trust is often used in second marriages, where both parties want to ensure that their assets eventually pass to their respective children. They are also used to protect capital against calls on it by third parties e.g. where the survivor has to go into residential care. As the survivor (provided that he or she is not the only trustee) does not control where the capital in the trust ends up, the Local Authority has to disregard it when calculating how much the survivor must contribute towards residential care fees.

Discretionary trust

A discretionary trust has a large number of potential beneficiaries and again, the trustees will make all management decisions relating to the assets in the trust. However it is "discretionary" because it is left entirely to the trustees to decide to whom or for whose benefit – if anyone – income or capital payments are made. As a discretionary beneficiary has no right to receive anything from the trust all of the assets held within it and its income will normally be disregarded when calculating maintenance or other payments in a divorce situation, or calculating a beneficiary's right to receive state benefits.

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