

SETTING UP A TRUST

When you set up a trust a 'written declaration of trust' is completed to provide a permanent record of the exact terms of the trust. This is a document that identifies the trust property, names the beneficiaries or group of beneficiaries and sets out the rules on how the trustees can deal with the property and the distribution of assets. Although no particular form or style is required, the words used must be sufficiently clear to show an intention to create a trust. It is best therefore, to seek legal advice or use an appropriate trust form supplied by your adviser or solicitor.

You can find a solicitor who specializes in trust law from the law society website (www.lawsociety.org.uk) and you can obtain contact details of a specialist trust adviser by contacting the Society of Trust and Estate Practitioners (STEP) (www.step.org). These people will be able to discuss your options, offer advice about the most appropriate trust for your needs and circumstances, and provide all the relevant trust forms.

Putting a property into trust

The method that is used to put property (your home or an investment property) into trust depends on whether you intend to set up a trust on your death or during your lifetime. Any change of ownership of property must normally be in writing so, if you intend to set up the trust on your death the relevant clauses, or the written declaration of trust, must be included in your Will. This will satisfy the requirement for the change of ownership to be in writing. Your personal representatives, once they are satisfied that your beneficiaries are entitled to the property, will assent to the transfer and your beneficiaries become the owner, even if they do not immediately take possession of the property.

If you want to transfer property into a trust that you are setting up during your lifetime the Settled Land Act 1925 requires two documents:

- a vesting deed conveying the land to the life tenant (which could be the surviving spouse) or statutory owner (usually the trustees) as legal owner;
- a trust instrument, or written declaration of trust, setting out beneficial interests, appointing the trustees and declaring the trusts.

Both of these documents can be drawn up by your solicitor. These documents enable the trustees to prove their ownership of the property, whilst not divulging details of the beneficiaries. This is sometimes referred to as the 'curtain principle'.

Choosing trustees

When you set up a trust you will need to decide who is to become a trustee. A total of four trustees can be appointed and it is advisable that you have at least two trustees. This can be you, your spouse, a trusted friend or relative, or a professional, such as a solicitor, accountant, or a trust and estate practitioner. Also, most high street banks have related trust fund companies that have been set up for the specific purpose of administering trust funds. Although you will have to pay for the services of a professional or a trust fund company, it is advisable to do this if you don't have the required financial and organizational skills to manage the trust yourself. A professional can also save money in the long run by knowing about tax relief.

Minors and those 'of unsound mind' (not of sound mind, memory or understanding) cannot be trustees and you should make sure that you choose trustees who are likely to act in accordance to your wishes and are able to make a long term commitment. You should consider becoming a trustee yourself as you can have a say in how the trust is administered. Indeed, many life assurance companies will appoint you as a trustee automatically if you choose to place your life assurance policy in trust. Finally, you should be careful not to appoint people where there could be conflicting financial interests, such as a family member who will benefit from the trust upon the death of the life tenant.

Choosing the beneficiaries

When setting up a trust you will also need to think about your beneficiaries (any individual, charity or legitimate organization) and how you would like to divide your assets between them. This will involve a careful assessment of all your assets and their value.

You will need to decide whether your beneficiaries should have an absolute 'fixed' interest in the trust property, such as in a bare trust where they are specifically named, or whether you want your beneficiaries to be chosen at the discretion of your trustees. In this case you will need to provide a list of all potential beneficiaries from which the trustees can choose at their discretion. For example, you may intend to leave some of your estate to your grandchildren and any grandchildren that have not yet been born, who you cannot yet name. In this case, 'my grandchildren and future grandchildren' will suffice because the trustees understand your wishes and can use their discretion when distributing assets to grandchildren in the future.

Protecting your funds

The best way to ensure that your funds are protected is to seek the advice of an experienced professional. If you use a member of a professional association you should be covered against professional negligence if things go wrong.

You also need to make sure that you appoint trusted and competent trustees. Trustees are the legal owners of the trust property and as such are legally bound to look after the property of the trust. It is imperative that you discuss your wishes, or leave clear instructions, with your trustees so that they understand fully what you are trying to do with your investment. This is one reason why it may be preferable to become one of the trustees yourself. You also need to make sure that your trust is protected by nominating someone else to take over if anything should happen to you.

Two useful leaflets called *Why Make a Trust?* and *Trusts Explained* can be downloaded from the STEP website: www.step.org/publications/leaflets.aspx. These leaflets provide a brief explanation of the benefit of making a trust, along with some frequently asked questions regarding trusts. They are updated annually and take into account any changes as a result of the UK Budget.

Comprehensive information and advice about all these issues is provided in *Investing in Property for your Children*, by Catherine Dawson (Lawpack: £14.99).

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