



Trusts

In broad terms, trusts are a separate legal entity that can own and manage assets. They are run by trustees for named beneficiaries.

The main types of trusts:

Discretionary Trust

This is a common form of trust created in Wills and in lifetime. With this type of trust, the trustees follow the wishes of the creator regarding the management of the trust assets and when and to whom distributions are made.

The main benefit of a Discretionary Trust is flexibility. It allows the trustees to react to changes in a beneficiary's personal circumstances, e.g. death, divorce, marriage or birth of a child and also to changes in the tax system. If a beneficiary dies, the trust assets will not form part of their estate for tax purposes and will not pass to the beneficiaries of his/her Will. Trust assets are also much less likely to be vulnerable to an unwanted claim from a non-beneficiary or a spouse if a beneficiary gets divorced.

Bare Trust

The simplest form of trust currently available. The assets belong outright to the beneficiaries but are managed by trustees on their behalf.

Life Interest Trust

This provides for a specific person to receive benefits for their lifetime or for a specified period (such as until they remarry). The benefit can include a right to live in a property and/or a right to receive income (in the form of interest, dividends, rents etc). The capital in this type of trust is not usually available for the beneficiary to spend, but it can be if that's what the creator wants.

They are very often used in Wills to give a surviving spouse a right to occupy the matrimonial home, but ensuring that if the spouse subsequently remarries, the property will still pass to their children and cannot be left to anyone else.

Taxation

In general, trusts can be used to reduce tax and are frequently used as a part of an estate planning exercise.

Why should I create a trust?

There are many reasons why you may wish to create a trust, for example to:

- Securely pass on assets to future generations
- Retain control over assets you wish to give away in your Will or in lifetime
- Provide for vulnerable or disabled beneficiaries
- Avoid Inheritance Tax
- Provide for children and partners from different relationships
- Protect entitlements to means tested benefits
- Minimise or eliminate the risk of assets being lost to the family by divorce or bankruptcy
- Set out joint property ownership arrangements

How is a trust created?

A trust is created by a Will if it is to come into effect after death, or by a Trust Deed or a Deed of Variation if it is to come into effect during lifetime.

To be valid, a trust will set out:

- Who is creating the trust (the Settlor)
- The rules governing how the trust is to be managed
- What type of trust is being created
- What assets are going into the trust
- Whether other assets can be added later
- Who is going to manage and administer the trust (the Trustees)
- Who can benefit from the trust (the Beneficiaries) and when
- Who can change the Trustees
- Whether further Beneficiaries can be added
- The laws and judicial system which apply to the trust

Every trust is subject to 'trust laws' i.e. laws that regulate what trustees and trusts can do. The terms of the Trust Deed or Will are therefore very important and need to be carefully drafted by experts.

What assets can a trust hold?

There are very few exceptions to the assets a trust can own, and trust assets typically include land, property, cash, shares, bonds, possessions, life policies and pensions.

Trust services available from Kreston Reeves

- Acting as a professional trustee
- Creating new trusts or settlements for any kind of asset including life policies and pension plans
- Handling the appointment and retirement of trustees
- Distributing trust assets to beneficiaries
- Winding up trusts and settlements
- Advising trustees of their duties and responsibilities
- Advising beneficiaries of their rights, powers and entitlements
- Dealing with trustees' reporting obligations and preparing trust accounts
- Registering trusts and subsequent changes to trusts with HMRC's Trust Registration Service

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For more than tax, legal and wealth advice please speak with your usual Kreston Reeves advisor or contact a member of the Kreston Reeves Legal Advisory team using the contact details below:

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