



# A Brief Guide to Trusts

A trust is an arrangement under which a person (the settlor) transfers cash or other assets to a small group of people (the trustees) of which the settlor may be one, to deal with and hold for the benefit of one or more beneficiaries.

## Why make a trust?

Trusts can be used as a tax efficient and flexible way to pass cash or other assets to your family or other beneficiaries including young children or even those not yet born, whom you would like to help, both during your lifetime and after your death.

The mitigation of tax liabilities on death is one of the principal reasons for setting up a trust. Giving your assets to a trust during your lifetime can reduce your own estate and exposure to inheritance tax, in order to preserve family wealth for future generations. Trusts can also be very helpful in reducing capital gains tax liabilities.

Other reasons for setting up a trust are to protect your assets, provide for the family in the future, for example by funding education for grandchildren, and to prevent assets leaving the family altogether. By the use of a trust, assets can be held for the benefit of the beneficiaries but without giving them full control immediately.

It is also possible to set up a charitable trust to benefit whatever good causes you specify.

## How do I set up a trust?

If the trust is to be made in your lifetime, to take immediate effect, then it is usually evidenced by a trust deed. 'Trust' and 'Settlement' have broadly the same meaning.

If it is to be created on or shortly after your death then the trust provisions must be set out in your Will - a 'Will Trust'. Whether by lifetime settlement or by Will, the trust document states who are responsible for looking after the gifted assets (the trustees), who are to benefit (the beneficiaries) and any rules or conditions that the trustees and beneficiaries must adhere to.

## Types of trust

The type of trust that will be suitable will depend on what it is intended to achieve, the situation of the beneficiaries and the tax consequences. Trusts fall broadly into two main categories according to how the income or benefit is dealt with namely:

### Interest-in-Possession Trusts

Those where the income or benefit must be given to the specific beneficiary - it is his or hers by right. There may be more than one beneficiary but they will all have a fixed entitlement. This type of trust is often used in a Will when a person dies leaving a surviving spouse e.g. 'income to my wife for her life and after her death capital to my children'.

This sort of trust is popular in the Wills of people marrying for the second time, each having children by their first marriage. It ensures that the spouse is provided for, but the children of the first marriage do not see their parents' wealth passing to the children

of the surviving step-parent. It is also widely used to help mitigate or reduce the liability of a surviving spouse having to pay for care home fees.

### Discretionary Type Trusts

Benefits are allocated at the trustees' discretion to any one or more of several beneficiaries. The trustees might even decide, for a time, to benefit no one; the income being accumulated for future use.

Discretionary Trusts give the trustees power to make gifts of capital and/ or income to a stated class of potential beneficiaries. Such a trust may suit you if you have identified a particular group of people you want to benefit but you are unsure which of them, in the future, will need help or in what proportions. For example, as a grandparent you might like to set aside capital for your grandchildren – including those who may be born later, even after your death.

Alternatively, you might wish to benefit your children but are aware that some of them are already wealthy and may not wish to be made wealthier by your intended gift. A Discretionary Trust in favour of all your children and grandchildren would allow your children the choice of taking the benefit themselves or passing it on to their own children according to their particular circumstances.



## Existing Trusts?

Before October 2007, it was common to include a Nil Rate Band Discretionary Trust in the Wills of married couples and civil partners. Its purpose was to save inheritance tax by making use of the nil rate band of the first to die.

The nil rate band is the maximum amount that can be given away by an individual without being subject to Inheritance Tax. The Finance Act 2008 changed the law to enable the nil rate band to pass between spouses and civil partners, so that this tax saving arrangement was no longer required.

If you made your Will before this change in the law, you need to take advice on whether your current Will remains appropriate to your wishes and requirements. We can advise you on the pros and cons of keeping this type of trust arrangement in place.

## Please remember...

In this brief guide we have mentioned only the main types of trust; there are many variations. Whatever your situation, a trust can usually be constructed to suit the need. We will provide professional advice to set out the most suitable options available to you.

## Making your Trust – a quick checklist:

1. Decide what property to include in the Trust
2. Decide who you want your beneficiaries to be, and how you want them to benefit
3. Choose your trustees
4. Contact us to make an appointment at:

Broomfields Solicitors  
Minerva House  
7 St John's Business Park  
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Rupi Kaur leads the Estate Planning team at Broomfields Solicitors. She is a Solicitor with many years experience and is a member of the Society of Trust and Estate Practitioners (STEP) which is the worldwide professional association for practitioners dealing with family inheritance and succession planning.

At Broomfields Solicitors we pride ourselves on providing a friendly and sympathetic service to clients and aim to give clear, straightforward advice and to develop long-term relationships with clients. We are committed to putting you first and advising on the best solutions available for you.

A substantial part of our work involves helping you plan for what life may bring your way. Our areas of expertise include:

- Wills and Trusts
- Lasting Powers of Attorney
- Tax Planning and Wealth Preservation
- Advice for the Elderly
- Probate and Estate Administration
- Conveyancing
- Commercial and Commercial Property Work
- Dispute Resolution

*Please contact us if you require any advice in these areas.*



Rupi Kaur is a full member of STEP

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