

Discretionary Trusts

Setting up a Trust for your family is an important decision; perhaps one you will make only once during your lifetime. Your Trust may remain in force for a lengthy period of time and it is often difficult to envisage how the fortunes of your family might develop over that period. So it is vital that your Trust is flexible enough not only to achieve the objectives you have planned for, but also to enable the Trustees to respond to changes in family circumstances which may impact your beneficiaries.

Discretionary Trusts are very flexible and offer valuable control and protection of the funds within them through the Trustees. In addition, they can provide potential Inheritance Tax (IHT) saving opportunities for the family.

As the name implies, Discretionary Trusts do not instruct the Trustees how and when to distribute the Trust or who is to benefit from the income or capital in the meantime. They operate by giving the Trustees discretionary powers to make these decisions as time goes on, enabling the Trustees to administer the Trust as flexibly as possible to achieve your wishes, and to respond suitably to the unexpected.

The Trust is established by a formal Deed which will: appoint the Trustees; name the potential Beneficiaries who may benefit; and set out the powers and discretions available to the Trustees. The Beneficiaries, who can be changed over time as required, do not have to be aware of the Trust and have no defined benefit in it.

Guidance can be given to the Trustees by you, or any other person you nominate, in an informal Letter of Wishes, initially provided at the outset of the Trust to define its objectives. The Trustees are not bound to follow these wishes, which can be amended by you or your nominee at any time, but we will pay close attention to them. We can help you draft such a letter, if you wish, once the Trust is in place. You are free to amend those wishes at any time.

During your lifetime you can retain an element of control by guiding the Trustees as to how the Trust might be used. For example, you may wish to help a grandchild with their education or the deposit on their first home. Although all payments remain at the Trustees' discretion, we as Trustees are happy to discuss the best options with you, or anyone else you have nominated. For instance there may be ways in which we can help the beneficiaries without making capital payments from the Trust, for example by making a loan rather than an absolute payment, or by using income, thus preserving the Trust fund for future generations.

On your death, as the Trust remains outside your Estate, there are no administrative delays. The beneficiaries may wish to have funds distributed, or loaned, from the Trust to use towards any IHT liability on your Estate. There may also be tax benefits for both children and grandchildren who are potential beneficiaries, and the Trust can continue for their benefit, offering further valuable IHT benefits.

Discretionary Trusts can be created from your own wealth or from an inheritance - by use of a Deed of Variation which must be completed within two years of the death. The advantage of a Deed of Variation is that the funds pass directly from the Estate of the person who has died and do not have an impact on your IHT position, whilst enabling you to benefit from the Trust if you so choose. See separate note: Trust set up by a deed of variation.

Discretionary Trusts can also be included in your Will.

NOTE: Sometimes a Trust is referred to as a Settlement, particularly in tax notes produced by HMRC (HM Revenue and Customs). The two words are interchangeable for most purposes.

The above notes were correct at the time this summary was issued but tax law and rates of taxation may change in the future.

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