

Understanding Trusts

How would you describe your home? Is it your castle? Your children's inheritance? Do you own more than one property? Are you looking to buy an additional property for investments or your family? Set to inherit a property from relatives? If the answer is yes to any of these questions then one method of protection that you may want to consider is to put your property into a Trust.

Your home is often the biggest single asset most people will own during their lifetime and it should therefore be protected at all costs.

What is a Trust?

A Trust is a legal relationship established when any individual (the "Settlor") transfers their assets or property to another person (a "Trustee") to be held by the Trustee upon Trust for the benefit of certain persons (the "Beneficiaries") or for specific purposes.

What do you need to create a Trust?

The Settlor - the person setting up the Trust. This happens by transferring legal ownership of their assets to the Trustee to hold upon trust for the benefit of the Beneficiaries.

The Trustee - the person who holds legal title to the Trust Property transferred into the Trust by the Settlor. The Trustee is responsible for managing and administering the assets on the terms set out in the Trust Deed. The Trustee may be an individual or a Corporate Trustee (for example **Westport Trust Company Limited**). All Trustees, whether they are individuals or Corporate Trustees, are the legal owners of the Trust Property.

The Beneficiaries - the persons named in the Trust Deed who will benefit from the Trust. Beneficiaries under a Trust are often but not exclusively the Settlor's children, grandchildren, family members. The Trust Deed may also give Trustees the flexibility to include future generations of the Settlor's family as beneficiaries.

Trust Property - the assets of the Trust, these can be real estate, cash, shares, antiques, or more simply anything a person can own can be owned in the Trust.

The Trust Deed - the agreement between the Settlor and Trustee. It generally describes the manner in which the trust property is to be held and invested, the purposes for which its benefits (such as income or principal) are to be used, and the duration of the agreement.

The Protector - a person who may be appointed to oversee certain aspects of the administration of the Trust Property as defined in the Trust Deed.

Why would a Trust be useful?

Trusts have many uses today and can be of considerable benefit when properly set up and managed, some of the benefits can be:

Children, family and future generations.

Trusts can provide flexible control of the assets for the benefit of minor children. A Trust can ensure that the child will benefit (e.g. daily maintenance, education) but will not have direct access to the trust assets. Perhaps you have a child or other relative who you may wish to provide for, but that person has a tendency to waste their money. In such a case, it may be a good idea to require that relative to receive money at intervals from a Trustee instead of giving them an outright gift in your will or during your lifetime.

Family Businesses

Shares in a business can be owned by the Trust which helps ensure continuity of running the business after a family member/shareholder's death, as well as eliminating the need to pay Stamp Duty on the transference of shares at that same time.

Multiple properties or developments

Trusts are not static and can be used easily in property development projects, renovations etc. Using a Trust can consolidate ownership by multiple parties, reduce the friction of joint ownership, and ensure Stamp Duty saving on the death of an owner.

Tax Planning

Once assets are in a Trust then they will not be subject to Stamp Duty (commonly referred to as Death Tax) when you die. The maximum percentage of Death Tax at the moment is 20%, which means the use of Trusts can represent a significant saving.

When should a Trust be used in a Property Purchase?

The best time for a Purchaser to think of using a Trust is BEFORE they buy the property. The Trust can be created before making a purchase or an existing trust can be used. When transferring property into a Trust it is deemed as if you have sold that property to the Trust. Therefore the value at the time of the sale is used for Stamp Duty, rather than the increased value after any development or simply through just a rise in property values.

Common Trust Misconceptions

I need multiple Trusts for multiple properties

Not correct, one Trust can evolve and hold as many or as little assets as necessary, be it cash, property, investments or even art and antiques.

Who Should I speak to?

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When choosing an attorney, friends and family are a great resource. They can often recommend experienced specialist attorneys as they will have consulted them before. A specialist attorney will be more experienced at dealing with any potential problems or delays in creating trusts.

You will always be in good hands with Westport Trust Company Limited.

Trusts are complicated

Not correct, banks, mortgagees and attorneys are used to dealing with Trusts on a day-to-day basis and would be happy to guide you through the process.

I have a will so I don't need a Trust

This depends on you as an individual. Trusts are a way of planning for the future while you are alive. Once an asset is put into a Trust you no longer legally own it and since it does not form a part of your estate on death it is not chargeable with stamp duty. Your will covers what you own personally.

Trusts take a long time to create

Not Correct. Our Trusts department can consult with you, prepare the documentation and be ready to sign within a couple of weeks.

Remember: You've worked hard for your wealth so why not take the right steps now to protect it!

The information given in this article is no substitute for actual legal advice. Before proceeding with creating a trust, it is prudent that you consult your attorney. Information is accurate as of date of publication: 31st January, 2011

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