



To trust or not to trust...

What is a family trust? Is it right for me?

A family trust is a legal way to protect and hold assets for your family. Trusts are a great succession tool. A trust can protect your assets in case of separation or business collapse as the assets are no longer owned by you personally but by the trustees. A family trust is also a good way to ensure that your wishes are complied with after death as a trust has a maximum "life" of 80 years as per the Perpetuities Act, although the Trust can be wound up earlier if they choose and the trust deed allows it.

The setting up of a family trust was once thought to be a fairly simple arrangement where a standard form could be used but now since people's lives are much more complicated more thorough input and tailoring is required to meet each individual's requirements. It is important to get the wording of a trust deed just right so that it allows sufficient flexibility for changing needs and changing times.

Things to consider: who should have the power to appoint/remove beneficiaries/trustees? This can be extremely important if a couple jointly establish a family trust and later separate.

You can put any asset into a trust, not just the family home. It is important to be very clear as to the source of assets which are intended to go into the trust and to transfer the assets into the names of the trustees.

The Trust purchases the assets from you and you can reduce the debt owing in two ways:

- By gifting the amount of \$27,000 per year (which is the maximum allowed without incurring gift duty)
- By the Trust making repayments out of either income or capital.

If you do decide to set up a Trust your Will also needs to be amended to take into account the new arrangements. Your Will may also require updating whenever further assets are sold to the Trust.

The Trustees must make sure that the Trust is run as set out in the trust deed and must record and keep minutes of all their decisions. A trustee's job is a very important one and the consequences of getting it wrong can be very serious. Trustees must be kept informed as to all relevant factors when making a decision.

The Trustee Act 1956 implies into every trust deed certain powers to the extent that a contrary intention is not expressed in the deed itself.

If you already have a trust, two questions to ask yourself are:

- Is my trust still up to date?
- Should I be making changes to my trust?

The Property (Relationships) Act 1976 and the Family Proceedings Act 1980 both provide statutory authority for interfering with trust terms and removing trust property. The aim of the legislation is to recognise the legitimate expectations of spouses or partners who have contributed either directly or indirectly to the assets owned by a trust, and to provide the mechanism by which effect may be given to those expectations.

A trust is intended to protect assets for the benefit of the named beneficiaries of the Trust. Trusts are widely used but often without a clear appreciation of its processes or the obligations it imposes on the settlor and trustees. Here at Dennis King Law we will find out exactly what you are trying to achieve and will clearly explain the result and any attendant responsibilities.

› For all your needs regarding setting up a family trust, or running/maintaining a trust or gifting programme please contact Dennis King Law.

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