

How to build and manage a family trust effectively



Will, Trust or Will Trust?

When you work hard all your life to ensure a comfortable retirement and security/legacy for your family after you're gone, you want your effort to be worthwhile. This means that you need to make suitable arrangements for your assets. A will is often the standard go-to approach when it comes to where your assets go, but a family trust can ensure that your wishes are followed as closely as possible, with a few key advantages which should definitely be considered.

Will, Trust or Will Trust?

The main difference between a will, will trust and a trust is that a will and a will trust will only come into effect upon the death of the individual. A trust has the advantage of taking immediate effect, meaning that assets can be organised and distributed at any point after it has been drawn up, whether before, on or after death. A will trust is the same as a trust apart from it is effective only from the death of the settlor.

Another key difference is that wills and will trusts involve the courts, and probate must be obtained before assets are distributed, which can take a significant amount of time. A trust does not need to be passed through probate as the assets are not part of the deceased estate, and assets can be distributed quickly, saving you time and money.

A will in Jersey becomes a public document when it is admitted to probate. If confidentiality is important to you, a way of avoiding the contents of your will(s) becoming public knowledge, your will would state that you leave everything to the trustees of a trust established in your lifetime.

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What are the benefits of a Trust?

An advantage to a trust is that you retain an influence over exactly who receives your assets and when, through your letter of wishes. By putting your assets into a trust, they are effectively removed from your estate, which can have many benefits including:

- Family assets can be kept together to be preserved and enhanced for future generations.
- Beneficiaries too young or vulnerable to control their own assets are protected.
- A trust is a very flexible instrument meaning that as wishes change or beneficiaries' personal circumstances change, the trust can adapt.
- Family assets in a trust may be able to be protected from the risk of loss, for example in the event of divorce.

The on-going nature of a trust means that assets are under the constant supervision of experienced qualified trustees, who can examine your assets and circumstances and help you structure a trust that works in the best interests of you and your beneficiaries.

Once you have come to the decision that a trust would be the best option for you and your loved ones, a trust deed can be drawn up at any time you wish. At Alex Picot Trust, we have been looking after families' assets for generations, and are renowned for our dedicated and personalised services. We work hard to ensure we can make arrangements that give you confidence and peace of mind that the people you love are taken care of.

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Three things to consider when setting up a Family Trust

A family trust can be a great option to ensure that your hard-earned assets go exactly where you want them to go, whether during your lifetime or posthumously.

As with any financial arrangement, there are considerations to take into account before you set up your family trust, to ensure that you achieve your desired results. Let's have a look at some of the key considerations to make before proceeding with your trust.

Who to name as Beneficiaries

In a trust, the key persons are the Settlor, the Trustees and the Beneficiaries. The Trustee is the company or individual to whom you have handed over possession of your assets to; the beneficiary is the person(s) you have nominated to receive the benefit of those assets.

The Settlor is the individual whose assets are placed into the trust. An advantage to a trust is that you retain a very strong influence over exactly who the assets are accumulated for or who they are distributed to through the letter of wishes.

For example, two children named as beneficiaries will be the sole recipients of the trust assets, regardless of who they marry, divorce or otherwise associate with. Only those named as beneficiaries have any rights to the trust assets, so it is important to consider every person you want to benefit from your trust arrangements. Additional beneficiaries can be added at a later date or indeed removed if required.

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What type of trust?

The flexibility of trusts is another key component to there being an effective estate management solution. There are different kinds of trust, each catering to different requirements, so your potential trustee, tax adviser or legal adviser can advise you on the most suitable kind of trust for your needs. A 'bare' or nominee trust is where the trustee is only a nominee, the trustees must simply follow the lawful instructions of the beneficiary in relation to the assets held in the trust. Conversely, a discretionary trust is guided by the trust instrument and the settlor's letter of wishes, meaning that assets are administered and distributed in accordance with the settlor's wishes. The trustees have discretion over the appointment of income or capital to the beneficiaries, there is no fixed entitlement with a discretionary trust. Should a fixed entitlement be required, this can be achieved through a life interest trust. The range of options provided by trusts, and any conditions/wishes of your own you wish to attach, can be generally discussed and incorporated.

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Tax benefits

It's no secret that tax laws around trusts are one of their appeals in some jurisdictions. Although recent legislation changes have tightened the tax benefits of trusts for residents of some jurisdictions, they can often still be a very tax-efficient option depending on an individual's personal circumstances. Trusts may have the secondary effect of giving the opportunity to defer or mitigate tax liabilities or remove them altogether. Where Inheritance Tax may be applicable on the transfer of assets or funds into the trust by UK residents, upon the death of the settlor or at ten-yearly anniversaries, for Jersey residents this is not an issue. Each kind of trust is taxed differently, so it is definitely another issue to discuss with your potential trustee on the drawing up of your trust. Now, having carried out your research into what being the settlor of a trust will entail, the stage is set for drawing up the trust documentation.

Drawing up the trust documentation

Find your Trustee

Finding a reliable trustee to oversee the management and execution of your trust is essential, and is worth doing some research. It is not strictly necessary to employ a professional (like a solicitor or accountant) to be a trustee however handing control of your settled trust to a friend or family member can cause complications in the future. Appointing an impartial third party, preferably a representative of an established, well-renowned and well-regulated company, may be an expense, but the expertise and objectivity they provide will ensure your trust being managed smoothly.

One of the key draws of a trust is the flexibility with which it can be approached and planned. Attempting to plan and manage a trust without a professional's input and knowledge may leave you with a structure that does not provide you with the solution you need. For advice on how to choose the right trustee for you, download our free one-page guide, [6 Essential Steps to Choosing a Trust Company](#).

Once your trustee is chosen, it's time to have your trust deed drawn up. Generally, your chosen trustee can provide you with the necessary documentation, which summarises your personal background, circumstances and finances, and lay out the plans for your assets and who is to receive them. Alternatively, a lawyer will be able to draft the documentation also. The expert assistance a professional can offer will ensure that nothing important is left out, the documents do actually set out your wishes accurately and that no conflicts should occur in the future. Once the arrangements have been laid out on paper, the actual deed is drawn up for you to sign. An independent witness to your signature is required in order to validate the document. Once both settlor and witness have signed the deed, it is considered delivered and effective, unless otherwise indicated. The final step for the trust to become active is for the initial settled funds (usually a minimal £10) to be settled into the trust.

Now that the trust deed has been drawn up, signed and the initial settled funds paid to the trustee, you are officially the settlor of a family trust. It is important to ensure that your affairs are overseen appropriately. While in some cases, the preparation of the deed is essentially the last thing on the To-Do list, circumstances can change, and the best-managed trusts are those under the constant supervision of professionals. It is also important to remember that the trustees don't have to remain the same for the lifetime of the trust. Should circumstances change, it is possible to vest the power to change the trustees in the settlor, the beneficiaries or the protector who is discussed in further detail under the Letter of Wishes.

The next big step is in the management of your family trust and the drawing up of a letter of wishes.

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Managing a Family Trust

Once your family trust is in place, your assets are now under the control and oversight of professional trustees. However, this eBook wants to take you through the process in its entirety. The next step is the management of a family trust, and what needs to be done in order to maintain it and keep it working as you, the settlor, intended for the benefit of the beneficiaries.

Letter of Wishes

This is the document in which you lay out your specific requests, and is a non-binding document to guide the trustees as to how the settlor would wish them to exercise their discretion. It provides your trustee with guidance on the proper maintenance and distribution of the assets. The letter of wishes is absolutely key to a successful family trust, but is a very personal arrangement, and should always be discussed with a professional before being finalised. The trustees or your legal adviser may provide you with a template containing areas to consider within the document but it must be tailored to your individual and family circumstances. In a letter of wishes, beneficiaries are discussed, as are the potential assets that the trust will contain along with how it is envisaged those assets will be distributed in the future. Beneficiaries named in the trust documentation will be required to complete questionnaires along with provide identification and verification documents which adds another level of security and peace of mind to your family trust. In this document, a protector can also be named, if catered for in the trust deed, who can be an individual or company appointed to monitor the activities of the trustee on behalf of the beneficiaries and to offer guidance to the trustees. They provide further confidence to the settlor that the best interest of the beneficiaries is always borne in mind by the trustee. However, the inclusion of a protector is not essential, and should be discussed with your trustee or legal adviser if you are considering one.

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Updating your Wishes

We know that things don't always work out according to plan. There may be a fallout among family members. Perhaps your son or daughter marries someone whose intentions you don't trust, or does something to make you doubt their capabilities with assets. Maybe the trustee you appointed passes away or retires. Perhaps a more pleasant change befalls you, like the birth of grandchildren you'd like to add as beneficiaries. In anticipation of such circumstantial changes, your trustee can make any necessary amendments to your trust, and ideally, will encourage you to review the trust along with the letter of wishes regularly.

Costs of Management

There will, of course, be costs associated with the setup of a trust and the ongoing management but as with most things, a bespoke quotation is required which will depend on the level of activity and the level of compliance costs. It's important to remember to ask about any fees that will be incurred when you meet with your solicitor or trustee. Having considered the set up and management of a family trust, the remaining step is equally important, the ongoing distribution (or accumulation) of assets.

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The running of a family trust

It's been quite a journey establishing a family trust, and making all the appropriate arrangements. Now that we've run through the process of setting up and managing a trust, there is only one part left: the execution of the trust, and the distribution or accumulation of the capital and income. One of the key advantages of a discretionary trust is that assets can be distributed at any time, before, on or after the death of the settlor. A trust continues beyond the lifetime of the settlor. You can take advantage of this opportunity during your lifetime to observe your trust fund, even if you don't wish for assets to be distributed yet.

Arrangements and Sanctions

Due to the flexible and custom nature of trust funds and the various kinds of trusts that apply to different circumstances, the outcome of your trust arrangement is dependent on your own situation. If you have put special measures in place for certain beneficiaries – perhaps vulnerable people or children under the age of 18 – then these will be observed and applied by the trustee. Similarly, protective arrangements can be made for any beneficiaries you believe may be financially taken advantage of by somebody else, or who aren't responsible enough to oversee their own finances. It is in such circumstances that enlisting the assistance of a professional trustee can be of particular benefit. An elected friend or family member may find themselves in uncomfortable situations or in a conflict of interest safeguarding valuable assets from people they know well.

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Distribution of Assets

In straight-forward circumstances, assets can be distributed easily and quickly. This is another advantage that can make it a better solution than leaving assets directly in a will. There is also the flexibility with a discretionary trust not to distribute the assets. Your trustee will organise the transfer of monetary assets to named beneficiaries when the trust comes into effect, or when they become entitled to them. This can be carried out via bank transfer or distributing assets in specie. Assets such as property, cars, antiques or houses, will legally be considered that of the named trustee when the trust comes into effect. Of course, the arrangements for such property will be further detailed in your trust documentation, and results will be quite bespoke. There are many options involved with the legal ownership of property through a trust. Generally any taxes or other charges owed on such properties will become the responsibility of the named trustee. This should be considered when allocating assets to beneficiaries, and is another area in which the help of a professional really pays off. On the set up of a trust, you have the option for it to run indefinitely or for a defined time period or purpose.

So there we have it. Your family trust is in place, and executed, and the named beneficiaries have had capital and income appropriately distributed to them or accumulated. As we have mentioned, although trusts can be put in place without professional help, employing a professional trustee or a solicitor with experience in the field can be the difference between achieving the results you wanted from your trust and the exercise being a waste of time.

If you want to know more about how to choose the right trust company who can set up a trust to secure your family's future download our free one-page guide; 6 Essential Steps to Choosing a Trust Company or contact us directly on mail@alexpicottrust.com or +44 (0) 1534 753777.



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