



Family Trust Q&A's

The average cost of obtaining probate on a £270,000 estate was over £10,830 via the Big 5 Banks and over £5,199 from High Street Solicitors.

Legal Services Consumer Panel Report, July 2011

33% of marriages end in divorce*, so there is a one in three chance that a beneficiary might lose a large part of their inheritance.

*Office of National Statistics, December 2011

1 -WHAT IS THE FAMILY TRUST?

It might help to think of a Trust as a safety deposit box for you to keep your assets in. You can pass your assets to a FAMILY TRUST established in your name and for your benefit whilst you are living ... but why? As the Law Society Practice Note "Making Gifts of Assets" (October 2011) says:

- (a client) may be relieved of the burden of responsibility for the asset
- It may reduce delays in processing their estate on their death

In addition it may help in:

1. Preserving family harmony wherever necessary.
2. Providing clarity of wishes and ease of distribution.
3. Making the Payment of any inheritance tax easier (IHT).
4. Preventing sideways disinheritance (accidentally or intentionally disinheriting your children after your death).
5. Preventing future claims on your estate by people you wish to exclude.
6. Protecting beneficiaries receiving means-tested benefits.
7. Protecting other vulnerable beneficiaries.
8. Protecting against premature death of a recipient of your gift.

2 - BUT MY FAMILY WILL DEAL WITH THINGS AFTER MY DEATH

The procedures that your family has to follow when you die are often not as straightforward as you might expect. If an estate includes property, savings and investments it can take many months to sort out. The cost incurred by your executors in gaining specialist help from a solicitor or bank could run into many thousands of pounds. Banks typically charge between 3% and 4.5% of the whole value of the estate. Solicitors usually charge an hourly rate plus up to 1% of the estate.

Even if the family decides to take on the job, the process involved in applying for the Grant of Probate can be lengthy, time-consuming and frustrating. Your family may not have access to any part of your estate until probate has been granted and may have to borrow to pay any inheritance tax due.

The administrative convenience of already having assets in a trust before you die is in itself a compelling reason for setting up such a trust.



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3 – WHO SHOULD BE THE TRUSTEES OF MY FAMILY TRUST?

Our Trust Corporation specialises in acting as Trustees. Most of our clients appoint us as their Trustees and our normal fees for this are included in the fixed cost. This ensures independence; it also means that experts are at hand to referee any family disputes after you have died and deal with any challenges to the trust you have set up.

If you decided that you wanted to be a Trustee it could be argued that the trust was a 'sham'. Also if you should lose capacity you would not be able to sign documents or resign as a trustee. Your fellow trustees could not act without you and would have to apply to the Court of Protection to remove you as a trustee and there would be a significant fee for doing this.

But remember, you control the Trustees – you can appoint new Trustees and remove existing ones if you wish to do so. Administering a trust can be complex and time consuming and may not be something members of your family would want to, or could, do themselves. However we will always retire as trustees if you ask us to, as long as the incoming trustees give suitable indemnities and take over responsibility for any liabilities.

4 – CAN I TRUST THE TRUSTEES?

The professional trustees are the legal owners of the assets but are NOT beneficiaries of the Trust. It is only the beneficiaries of the Trust that can ultimately benefit. The trustees ensure that you keep control. During your lifetime they will support your decisions (within the terms of the trust and the law of the land), which means that you make the choices regarding the Trust and cannot be outvoted by other interested parties. We cannot benefit from the Trust in any way and we are authorised and supervised by Secretary of State and HM Revenue and Customs. We are bound by the terms of the Trust, a copy of which you receive before signing. For your protection we carry Professional Indemnity Insurance of £2 million per trust.

5 – WHAT ABOUT ONGOING FEES?

There aren't any under normal circumstances! –with the FAMILY TRUST you pay the costs at the beginning and there are no on-going fees up to the point when the assets in the Trust are to be distributed* or, if it is appropriate for the trust to continue, the Professional Trustees will provide details of any on-going fees in these circumstances for approval by the beneficiaries.

If the assets held in trust grow faster than inheritance tax allowances, or excessive withdrawals are taken from the Trust these may trigger tax charges, but not extra fees.

*The normal costs of selling or transferring property such as valuation, marketing and conveyancing charges will be paid from the proceeds of sale or by the beneficiaries, but the administrative work included is included in the initial fee.

6 – WHAT HAPPENS IF ONE OF US DIES?

The Trust, and the protection it gives, simply continues as before until the second person dies. The survivor can continue to retain the benefit of the Trust.



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7 – TRUSTEES DIES OR LOSES CAPACITY?

The advantage of a trust corporation acting as trustee is that it carries on even if directors die and it cannot lose capacity. A personal trustee who loses capacity has to be removed by court order at significant cost to the Trust.

8 – DO I STILL NEED TO MAKE A WILL AND A LASTING POWER OF ATTORNEY?

Anything you put into the Trust will be distributed in accordance with your expressed wishes and the Trustees will have regard to your Will. The Will distributes anything you own when you die that you haven't put into Trust. It is important to have a Will that is compatible with the Trust.

A Lasting Power of Attorney (LPA) document enables your chosen people (Attorneys) to manage assets you didn't put into the Trust whilst you are alive, if you are unable to deal with them yourself following accident, injury or disease. Lasting Powers of Attorney are optional but highly recommended as part of your wider estate planning.

9 – WHO CAN SET UP A FAMILY TRUST?

This can be any person who fully understands the scope and nature of their assets and actions, and who is mentally capable of making such decisions. The Mental Capacity Act 2005 presumes a client has capacity unless there is evidence to the contrary.

10 – WHAT TYPE OF ASSETS CAN BE PLACED WITHIN THE TRUST?

Commonly, clients place their house and savings within the Trust. In order to avoid incurring income and capital gains tax on trust assets your investment adviser will recommend appropriate investments to the Trustees. Some types of investments cannot be held by trusts without tax consequences.

11 – CAN OTHER ASSETS BE ADDED LATER?

Yes – but please check with us before doing so to ensure no tax liability occurs.

12 – IS THERE ANY LIMIT ON THE VALUE OF ASSETS PLACED WITHIN A FAMILY TRUST?

No – but if the client is placing assets valued in excess of his or her available Inheritance Tax Nil Rate Band within the Trust this would create tax consequences.

13 – WHEN IS THE BEST TIME TO SET UP A FAMILY TRUST?

As soon as possible. It can only be set up by someone with the legal capacity to do so and capacity can be lost unexpectedly through accident, illness or dementia, in which case it would be too late to relieve your family of the burden of probate or to set up LPAs.

14 – WHO WOULD BE THE BENEFICIARIES OF THE TRUST?

Normally the beneficiaries of the trust are the same people included to benefit under the terms of your Will, however this decision is yours.

15 – WHAT IF I WISH TO SELL MY PRESENT HOME & PURCHASE ANOTHER?

If you wish to move home after placing the house into a FAMILY TRUST you can do so. The paperwork would be signed by the Trustees but there are no restrictions on you. Any surplus cash is still protected by the Trust and will simply be added to any other savings and invested by the Trustees. Normal conveyancing and marketing fees would apply.



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16- WHAT IF SOME OF THE SAVINGS WITHIN THE TRUST ARE NEEDED BY YOU?

Simply ask the Trustees for a discretionary transfer of funds from the Trust back into your name if and when this is required. If you have an existing project in mind, funds for this should be set aside outside of the trust.

17- WHAT HAPPENS IF ONE OF US BECOMES INCAPACITATED?

The Trust simply carries on. Any assets inside the trust continue to be managed by the Trustees. Any assets outside of the trust would be managed under your LPA.

18- IS THE PLAN USEFUL FOR INHERITANCE TAX PLANNING?

This type of Trust is not designed specifically for Inheritance Tax planning. If such planning is required we can address this separately.

19 - WHAT HAPPENS IF I WANT TO OBTAIN A FURTHER ADVANCE FROM MY LENDER OR TAKE OUT A NEW MORTGAGE OR EQUITY RELEASE?

You will probably have to take your house back out of the Trust and then afterwards see if your lender will consent to it being transferred back into the Trust.

Also, depending on the value of the other assets in the Trust and of any other lifetime chargeable transfers previously made by you, the transfer of the house back into the Trust could give rise to a charge to lifetime inheritance tax and possibly stamp duty.

If this situation arises it is therefore essential that you speak to us before making any arrangements.

20 -WHAT HAPPENS WITH IMPROVEMENT GRANTS IF MY HOUSE IS IN THE TRUST?

This may affect the amount of repairs or improvement grant you could obtain in the future. You could take the house out of the Trust to get the full grant and then put it back in again but this would mean that you lose the accrued protection of the Trust so far as the house is concerned and you would effectively be starting the process over again in that regard. You would be required to pay 3rd party outlays such as government registration dues again but no further fee would be charged.

Transferring the property back into the trust may be deemed a "disposal" and breach the terms of the grant, triggering repayment of some or all of it.

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