



## **FAMILY TRUST (ASSET PROTECTION TRUST) FACTSHEET**

### **Why create a Family Trust?**

A Trust is a relationship which is recognised by the Courts, and the details of the Trust are contained in a formal Trust Deed which acts rather like your family legacy rule book.

Creating the Trust has the advantages of being able to satisfy most of the reasons why you might wish to dispose of your property, namely:

- Formally recognising financial contributions of other family members that they may have made directly or indirectly to the property.
- Avoiding problems following your death by recognising during your lifetime any potential issues that might arise.
- Once the Trust is created the Trust Deed will specify where the property is to go on your death.
- Once in the Family Trust, the property can be sold quicker following your death as no Grant of Probate will be required
- The burden of owning property will be passed to the Trustees as they can meet both the financial and psychological burdens of owning property should you wish them to do so.
- By creating the Trust you can rest assured that you can remain in the property as long as you wish.
- Even if the property is sold, you can remain entitled to the income from the sale proceeds and use it to supplement your income should you need to live elsewhere.

### **What are the possible disadvantages of a Family Trust?**

Once created, the property has to be transferred into the names of the Trustees. Whilst your right to remain in the property will be protected, you will no longer have legal ownership of the property and the Trustees will have certain discretionary powers which they can exercise in respect of the property.

Should you need to use the capital in the property to support a loan such as an equity release scheme, then once the property is in the Trust, the number of potential lenders that will deal with a trust will be restricted

### **Your Trustees**

Your Trustees will need to keep records of all receipts and payments relating to the Trust, which is important for tax and other purposes. Once the property is placed into the Trust, then the buildings insurance of the property must also be transferred to the Trustees. Contents cover, however should remain in your own name.

### **Choice of Trustees**

You will need to give careful thought to your choice of Trustees. A minimum of two and maximum of four people should be chosen, especially if you wish to place property or land into your trust. Whilst the Trustees must act in accordance with the Trust Deed, they also have certain discretions.

You can also choose to make the Trustees act by majority or unanimously; although care needs to be given if you wish them to act unanimously, as if one Trustee disagrees then no decision can be made. You may wish to use some of the beneficiaries of the Trust as Trustees, but you should be aware that sometimes this can create a conflict of interest. For example, if they are to receive the property upon you vacating the house, perhaps to move into residential accommodation, then they may actively seek to encourage you to take this course of action earlier than you may actually require.



One option is to you choose completely independent Trustees who have no interest in the Trust property. If you require assistance, we can provide details of professional Trustees

### **The Trustees' Responsibilities**

The Trustees do not have any power to go beyond the terms of the Trust Deed. However, most things which a person would want to do with his own money or property can be done by the Trustees provided it is for the benefit of the beneficiaries.

#### **The Trustees must:**

- Disclose any circumstances where they might have a conflict of interest with one or more of the beneficiaries. For instance, if a beneficiary owes the Trustee money, then this should be disclosed.
- Not act in conflict with the interest of any of the beneficiaries or profit from their role as a Trustee.
- Ensure that they know exactly what the terms of the Trust are, and that the terms of the Trust are fulfilled.
- Ensure that they do not exceed the terms of the Trust or their powers granted in the Trust Deed.
- Ensure that good Trust records and accounts are kept and account to the Inland Revenue for any tax due.
- Take independent financial advice at appropriate times and ensure that the advice taken is in accordance with the Trustee Act 2000.
- Act impartially and fairly between all the beneficiaries.
- Take reasonable care in exercising their powers. It is worthwhile noting that Professional Trustees have a higher standard of care to meet than individual Trustees.
- Act jointly. As Trustees are jointly liable for any mistakes, it follows that they should therefore act together and not delegates tasks to each other.
- Not charge fees. Only Professional Trustees can claim the payment for acting on behalf of the Trust. Lay Trustees may only claim out of pocket expenses.
- Ensure that the beneficiaries of the Trust are kept fully informed. This helps avoid disputes.

### **Annual Meeting**

It is advisable that the trustees have an annual meeting to review the trust. This can simply be minutes of a discussion between the trustees and is simply to ensure that the trustees comply with their responsibility.

### **The terms of the Trust Deed**

With the trust, it is usually the home or the assets of the person creating the Trust which forms the assets of the Trust. The property generally remains in the Trust for the duration of the life or lives of the persons that have created the Trust (or until the Trustees, for some good reason consider otherwise).

During your lifetime, you can remain living in your home as you do now or receive an income from the assets placed into trust. However, the home can be sold if you need to move with the sale proceeds being reinvested into another property for you. Alternatively, the sale proceeds can be invested to generate an income for you if necessary. However, you should be aware that having property in a Trust is not the same as having it in your own name, and you cannot go ahead and sell the property under your own name.

### **Can the trust be terminated?**

The simple answer is yes, if all the beneficiaries agree then they can instruct the trustees to close the



trust. However, this cannot be done if a beneficiary is a minor or lacks the capacity to agree; also, a trust cannot be closed if you have retained a right to live in the property or receive income, so you will always be protected. You can always remove the assets from the Trust.

### **Tax matters**

Whilst you remain in the property, tax should not have a great impact. According to HMRC whilst there is no income being generated by the Trust or a capital gain has been made by the trust selling assets, there is no need to register the trust and a yearly tax return will not be issued by the Tax Office.

### **Inheritance Tax**

Provided that the value of your home is below the current nil rate band threshold (for 2015/2016 - £325,000 or £650,000 for a married couple), inheritance tax is neither saved nor increased by transferring your home into a Family Trust.

If, however, your home is valued close to or over the nil rate band threshold, then you will need to tell us and we will explain to you the inheritance tax consequences of creating the Trust.

### **Capital gains tax**

Because the principle private residence exemption to capital gains tax applies, when you transfer the property into the Trust, then there will be no capital gains tax charges. However, if you cease to live in the property for a length of time and then it is sold, there may be a capital gains tax charge. This is exactly the same as if you owned the property outright in your own name.

If there are other assets also held in the Trust (other than cash), then the current capital gains tax rate will apply to any gains made on those assets. However, your own capital gains tax annual exemption can be used to offset any Trust gain.

### **Income tax**

Whilst you live in the property, you will not pay a rent for the right to reside in the property and therefore there is no income tax charge. If however, it is rented out at a later date or the sale proceeds generate an income, then income tax will be payable at the lower or basic rate of tax depending on the asset type.

### **Stamp duty land tax**

Generally there is no tax to pay on founding the Family Trust. Stamp duty land tax may arise if the property is sold and an alternative property is purchased by the Trust for you to live in. However, this is the same as if the property was in your own name.

### **Pre-owned asset tax**

This does not apply where you have an interest under a Family Trust; it only applies in special circumstances, usually involving more complex inheritance tax planning schemes.

### **Reducing the cost of long term care fees**

One of the possible benefits of transferring the family home into a Family Trust may be avoiding the need to sell the property for residential care or nursing home care charges, thus securing the



family's inheritance. However, we cannot give you any guarantee that this will be successful, as there is no fool-proof way of avoiding the value of the property being taken into account in means testing. There are anti avoidance measures contained in the law to enable some gifts or disposals of property to be ignored by the authorities and even possibly set aside by the Court.

### **Do we need to open a bank account?**

This will depend on whether the assets in your trust are based on cash, or involve the payment of sums. If the trustees decide to sell the assets then a bank account will be required. A bank account will need to be opened by the trustees in the name of the trust.

### **How Do Beneficiaries obtain the Benefit?**

Normally, a beneficiary can receive the benefit based on several things:

- \* Whether the trustees have full discretion to deal with the beneficiaries
- \* Whether obtaining the benefit is under a special condition ( such as for educational purposes)
- \* Whether it is specific to a rule in your trust ( eg beneficiary has reached the age of 25)
- \* It will be possible within your trust for a beneficiary to ask for a loan as the trustees will have the power to lend.

The Beneficiary would apply to the trustees, who would then deal with the request from the beneficiary and make payment, or refuse it dependent on the request.

It is advisable that any agreement to make payment to a beneficiary, or any refusal to a beneficiary, is recorded by the trustees, with each trustee signing the document.