

The purpose of this Fact Sheet is to outline the characteristics and possible advantages and benefits of creating a Discretionary Trust under the provisions of a Will.

A Trust is a legal arrangement whereby a person (the settlor) gives assets to another person (the Trustee) to look after on behalf of a third person (the beneficiary).

Discretionary Trusts are the most flexible type of Trust as you do not need to specify who your beneficiaries (the people you wish to benefit) will be. You can simply describe a 'class' of people, for example "my spouse, my children and my grandchildren", who the trustees can benefit at their discretion. Your choice of trustees is very important as they will decide who will benefit, in what way and when. This means that none of your beneficiaries are absolutely entitled to any of the assets in the trust and they cannot claim income or capital as of right. The Trustees of your will (who are usually also the Executors) are also provided with guidance (by way of a letter of wishes) as to how the Discretionary Trust created by the Will is administered.

Discretionary Trust Wills allow you to place assets into trust on death. Wills could be drawn up for both spouses and on the death of the first spouse assets amounting to a sum no greater than the Nil Rate Band for Inheritance Tax (£300,000 for tax year ending 5th April 2008) would be placed into trust. This arrangement allows the Nil Rate Band of the first spouse to die to be utilised. It also means that neither the surviving spouse or the children would own the assets. The Trustees would own them, under the Terms of the Will Trust (as guided by the Letter of Wishes)

There are several advantages in doing this:-

- The surviving spouse can be named as Trustee along with children, for example, to allow him or her to retain some control over what happens to the assets in the Trust.
- You do not have to specify in your Wills which assets will go into the trust, (i.e, house, savings, shares etc.). This decision is made by the Trustees on the death of the first spouse.
- None of the beneficiaries in the Will are absolutely entitled to any of the assets. It is down to the discretion of the Trustees who benefits and when. The surviving spouse would also be included in the class of beneficiaries so that he or she could benefit from the trust with the agreement of all of the trustees.
- Assets can be protected for the beneficiaries and Discretionary Trust Wills can have numerous benefits
- Discretionary Trust Wills can be used to protect assets for example: against long term care costs, in cases of second marriages, where the intended beneficiary may be in financial difficulties or where, perhaps they have health issues.

We recognise that this is a relatively complex area, but the benefits of Discretionary Trust Wills can be substantial and would be happy to arrange a no obligation appointment to discuss the relevant issues with you.

Please contact us if you require any further information.

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