

Will trusts

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Succession planning is crucial to all of us. It is not simply the reserve of the wealthy. All of us have the opportunity to leave a Will setting out our wishes for the distribution of our assets to ensure those people closest to us receive those assets we wish them to receive. This might be our spouse, children, best friend or those charities closest to our heart.

A Will Trust can provide certain planning opportunities that an ordinary Will cannot

Whilst many of us dislike thinking about our mortality, for some of us, we might be forced to consider particular circumstances. Our children might be young, our health might suffer a turn for the worse or we are simply further through our life journey than we used to be. A Will Trust can provide certain planning opportunities that an ordinary Will cannot.

A will trust is a will, but contains terms and provisions for the creation of a trust.

What is a Trust?

The trust is a legally binding arrangement whereby you, as testator, leave your assets to persons (known as trustees) who are entrusted with legal title to those assets (known as trust property) for the benefit of other persons (known as beneficiaries) or for a specified purpose. The Will contains the terms and provisions of the trust setting out the duties of the trustees and the rights of the beneficiaries. The trustees will usually have the power to manage the trust property in accordance with the powers accorded to them by the trust and the duties imposed upon them by law.

In addition to the trust, you may wish to leave your trustees a “Letter of Wishes” expressing your wishes as to the management and disposition of the trust property in the future. Such letters are not legally binding upon your trustees, but are considered highly persuasive.

Uses of a Will Trust

The range of uses is vast and depends on your circumstances, but flexibility and confidentiality are principal advantages. Some typical applications are to:

- Preserve and transmit the continuity of ownership of particular assets within the family
- Provide for a child’s education and benefit until attainment of age of majority or such older age as may be prescribed
- Provide for a disabled child or relative who may require assistance financially or in their day-to-day care and other matters
- Provide an income for the upkeep of family graves or generational property
- Provide periodic charitable donations.

Forms of Trusts

Various types of trust exist and the most appropriate will depend on your circumstances and intentions. Some of the more common types of trust are as follows:

1. Discretionary Trust

The discretionary trust provides maximum flexibility and is particularly useful when, at the time the Will is written, the future requirements of beneficiaries cannot be accurately determined. It provides the trustees with wide discretionary powers as to when, how much and which beneficiaries benefit and allows the trustees to adapt to changing requirements and/ or circumstances. Consequently, the beneficiaries do not have direct legal rights over assets held in trust, but do have a right to be considered for benefit when the trustees exercise their discretion.

2. Fixed Interest In Possession Trust

This type of trust vests a fixed interest or entitlement in a particular beneficiary. For example, a trust may require that the trustees distribute all income generated to a particular beneficiary for their lifetime and subsequently to other named persons (such as children) in fixed proportions.

3. Accumulation and Maintenance Trust

An accumulation and maintenance trust does not provide a beneficiary with a fixed entitlement until a certain period or event occurs. Before then, income is accumulated and is accrued to capital. Therefore, beneficiaries ultimately entitled to the capital receive the benefit of the accrued income. The trust may give the trustees discretionary power to distribute assets to beneficiaries up to a particular age for education, maintenance and general benefit and, thereafter, require the trustees to distribute a stated share of the assets to each beneficiary upon attaining a specific age. Hence, this type of trust is especially useful to benefit multiple persons.

How we can help

At Collas Crill we can:

- Advise the best practical and efficient Will for your circumstances
- Liaise with advisers in other jurisdictions where you might have assets
- Assist in the preparation of your Will or Will Trust
- Recommend professional trustees, if you wish, and, if you do not so wish
- Advise you on any related regulatory matters that might affect non- professional trustees in Jersey
- Assist with any company law issues that might be relevant to your estate or might assist your estate in the future.

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