

TRUSTS

Trusts are often bandied around but what is a trust and do you really need one?

A trust is made up of three parties:

- The settlor is the person who sets up the trust and transfers an asset/s to the trust. The settlor often also holds the power to appoint and remove the trustees. Anyone can be a settlor and anyone can become a settlor of a trust by transferring an asset into a trust.
- The trustees who are charged with managing the assets of the trust to the best of their ability for the beneficiaries. In the example of a family trust, the trustees would normally be a husband and wife and an independent trustee such as the lawyer or accountant. The trustees own the assets of the trust on behalf of the trust.
- The beneficiaries – generally discretionary beneficiaries, these are the people for whom the trust is set up to benefit, such as the settlor, children, grandchildren, siblings and charities.

A person can choose to be the settlor, trustee and beneficiary of their own trust.

A trust operates in the same way that a person does, in that it can own property, raise a mortgage, own shares and investments or operate a business, as long as it operates within the provisions of the trust deed.

A trust can only exist for a finite period of time, which is any period up to 80 years. At this time, called the date of distribution, all of the assets in the trust are distributed amongst the beneficiaries by the trustees.

A beneficiary has no automatic right of entitlement to a distribution from the trust. However, all beneficiaries have the right to be considered for any distributions that the trustees might make.

There are a number of reasons as to why someone might want to set up a trust:

- ✓ To protect assets for your family by separating them from yourself and any risks you personally take on
- ✓ To protect against the possibility of relationship property claims in the future
- ✓ To transfer assets from one generation to the next
- ✓ To protect assets against being used for aged care
- ✓ To help manage the assets of someone who may be ill or unable to manage their assets themselves
- ✓ To protect assets against the possible future introduction of capital gains tax or estate duty
- ✓ To assist with estate administration by putting your assets into a trust before death
- ✓ To change your tax liability

Before setting up a trust, it pays to talk with a structure specialist to determine if it's right for you. There is a cost in setting up a trust, as well as the ongoing maintenance of the trust itself. While trusts are the cornerstone of any asset protection plan, there is always a cost with setting up a trust as well as maintaining it. In my opinion, these costs are like insurance premiums – you never know whether or not you'll need them, but when you do, you're so pleased that they're there. Take into account the value of assets you are protecting. If your family home is \$400,000, and it costs you \$3,000 to set up a trust and transfer your home into it, and then \$1,500 a year to maintain it, the cost is less than 1% of your asset value.