

## Why Have a Trust?

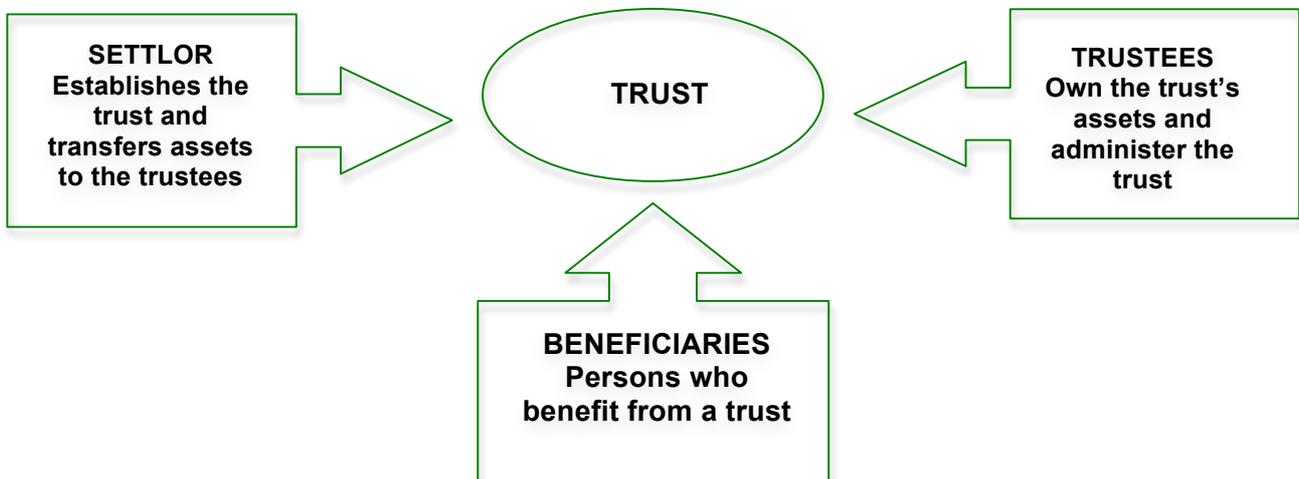
There are many reasons for creating a trust, including:

- General estate and succession planning for the benefit of future generations;
- Limiting potential liability to claims under the Family Protection Act and Testamentary Promises Act;
- Retirement planning and savings;
- Reducing personal ownership of assets to lessen exposure to unforeseen third party claims;
- Taking advantage of any legitimate income splitting amongst beneficiaries for income streams received by the trust;
- For charitable purposes;
- Protection against exposure to re-introduction of estate duty;
- Protection of assets as part of pre-marital or pre-relationship planning;
- Providing for family members with special needs.

### What is a trust?

One person (the settlor) transfers property (any asset) to another person (the trustee) who holds that property for the benefit of ascertainable persons (the beneficiaries).

### Key elements of a trust



### What makes a trust valid?

- The settlor must have intended to create the trust;
- The settlor must have transferred property to the trustee;
- The settlor must have specified at the time of creating the trust either who the beneficiaries are or how they are to be ascertained;
- There should also be a validly appointed trustee or trustees, who accept their appointment as trustees;
- Evidence of its existence is required. This is normally a trust deed which records the formation and sets out the terms of the trust.

### **Who should be appointed as a trustee?**

Any person or entity capable of owning assets can be a trustee. Generally the trustees of a family trust are the persons establishing the trust together with an independent trustee. In today's society a trustee requires knowledge, expertise, impartiality and administrative capability in relation to the trusts being administered and for this reason the independent trustee is often a professional advisor.

### **Trustee Obligations**

The trustee must administer the trust in accordance with the terms of the trust deed and the law relating to trusts and has duties to the beneficiaries.

### **Who can be the beneficiaries?**

Beneficiaries of a standard family trust usually include the persons establishing the trust together with children or grandchildren.

### **How is property transferred to a trust?**

Trusts are generally settled by the settlor giving a nominal gift to the trust of say \$10. Once the trust has been established, other property may be transferred to the trust. This is typically done as set out below:

- (a) by way of a sale at current market value. The trust will owe the purchase price to the vendors of the property who will usually commence an annual gifting programme to reduce the amount of the loan outstanding over time; or
- (b) by way of an outright gift of the asset to the trust.

The option selected will depend on the settlor's circumstances.

### **Should you do a new will?**

When creating a trust, the settlor should execute a new will which complements the trust and which, generally, leave any significant personal assets to the trust.

For more information or assistances please contact any of our Trust and Management Services Team.

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### **DISCLAIMER**

This information is intended to be general in nature. You are strongly recommended to seek your own legal advice in relation to the matters dealt with here.