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Myerson **Personal**

A Guide to Setting up a Trust

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Welcome

We understand the complexities of modern life, relationships, and the importance of taking care of you, your family and your financial interests. So it's a deep source of satisfaction that so many families, institutions and individuals choose Myerson as an integral part of their succession strategy.

Why Myerson?

Our specialist Wills, Trusts and Probate Team are all highly experienced and help executors deal with estates on a regular basis.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

Find out more about our [**Private Client Team**](#).



A Guide to Setting up a Trust

What is a trust?

A trust is a vehicle where the legal ownership of an asset is separated from the entitlement to the asset.

The legal owners (the trustees) are appointed by the person setting up the trust (the settlor) for the benefit for another party (the beneficiary).

There are many types of trust and the terms can be tailored to suit your individual needs and circumstances.

Why do I need a trust?

There are many reasons why an individual might want to set up a trust, including asset protection, saving tax, and providing for family members while retaining control.

A trust can be set up during the settlor's lifetime, which, if certain criteria are met, can help reduce the value of the assets in their estate for Inheritance Tax purposes.

A trust can also be set up in a Will so that it only takes effect on death and the settlor has full control and use of those assets during their lifetime.

Trusts are also particularly useful for receiving proceeds from life policies and pensions.



What type of trusts are there?

There are many types of trusts, but for legal purposes, most trusts which are created by deed fall into the following categories:

- a) Bare trusts;
- b) Interest in possession trusts (IIP); and
- c) Discretionary trusts.

Bare trusts

These are trusts in which the trustees are simply nominees for the true owner, who can request that the relevant asset be transferred to them outright at any time. They also arise when assets are held for children until they are 18.

Interest in possession trusts

Typically, one person, such as a second spouse, is entitled to the income from the trust fund during their lifetime, but others, such as the deceased's children, are entitled to the capital when s/he dies.

Discretionary trusts

As the name suggests, these are trusts in which payments from both income and capital are at the discretion of the trustees. The settlor nominates a range of potential beneficiaries, but otherwise, the trustees have complete discretion as to who gets what, when, and how much (if anything).

Who should I appoint as trustee?

Trusts are so-called because the trustees are trusted to look after the asset for the benefit of someone else. It is helpful to have individuals who understand the purpose of your trust and who can work together.

We would always recommend a minimum of 2 trustees and a maximum of 4.

Trustees must act unanimously unless special provision is made for majority voting within the trust deed. Trustees can also be a beneficiary, but this may not be desirable as it could cause a conflict of interest.



An independent trustee can be very useful for a discretionary trust. In some cases, a professional trustee is more suitable.

At Myerson, we have a trust corporation and often act as independent trustee.

We would always recommend a minimum of 2 trustees and a maximum of 4.

Are there any tax consequences of setting up a trust?

The main types of tax to consider when setting up trusts are:

- Inheritance Tax (IHT)
- Capital Gains Tax
- Income Tax

In most cases, trusts set up during someone's life is treated the same for tax purposes. Provided the settlor is not also a beneficiary, a gift into a trust will be a valid gift for IHT purposes and will leave the estate of the settlor after 7 years. There are also ongoing IHT charges to consider if the gift into the trust exceeds the Nil Rate Band (currently £325,000).

Capital Gains and Income Tax are usually also usually levied at the highest rates but can be reclaimed if assets are paid out to beneficiaries who are lower rate taxpayers or those with tax allowances to use up.

For trusts arising on death, the estate is taxed according to its size and (apart from spouse or charity exemption) the tax is the same whether the money is left to individuals outright or to a trust. Thus usually a trust arising on death will not save tax at that stage, but often people choose trusts because of the long term tax savings (the regular 6% charge IHT as against 40% when each generation dies) and the other benefits which trusts bring.

If an IIP trust arises when someone dies, then that person is treated for IHT purposes as if they owned the money in the trust outright. Therefore, if the person with the IIP is the spouse of the deceased, spouse exemption will apply and the gift will be free of IHT. When the person with the IIP dies, the assets are treated as being part of their estate and taxed accordingly. The periodic charge does not apply.



You're in safe hands!

If you would like further information about how we can help you setting up a Trust, or if you have any questions, please don't hesitate to contact a member of our **Private Client Team** today.

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