



How Can Trusts Help Me and My Family?

What is a Trust?

The meaning of a “trust” is one person (or more than one person) holding property for the benefit of someone else. There is a separation between the legal owner of the property, the trustee, and the person who enjoys the benefits of the property, the beneficiary. It is the trustee who functions as a caretaker making decisions about how the property is managed. One of the trustee’s main roles in doing this is to make prudent investments with the money held inside the trust. It is the beneficiary of the trust who enjoys the benefit and value of the property.

What does a Trustee Do?

A trust is usually created through a written document which describes the role of the trustee and under what circumstances the beneficiary can receive the property being held by the trustee. Depending on the terms of the trust, the trustee can have a little or a lot of discretion in making decisions with respect to the management of property and distribution to beneficiaries.

Why Establish a Trust?

The reason to set up a trust is to save money and protect wealth.

Options — Family Trusts made through your Will

You can set up a trust for someone which will take effect after your death. This is called a testamentary trust. Here are some situations where a family trust can be very useful:

- It allows you to give money to children or young adults while making sure that the money is being carefully managed by a trustee until the children are old enough to manage it

themselves. This means you do not have to worry about your children wasting their inheritance before they are mature enough to handle it.

- Using a trust to transfer the value of your estate to your spouse when you die avoids having to pay tax right away. This type of trust will usually include a provision for transferring the estate to the children when the second spouse dies.
- A family can set up a special type of trust, referred to as a *Henson Trust* for children who are disabled.
- If you have a life insurance policy which will go to a child under 18 years old, you can set up a trust which will capture the proceeds of the policy at your death. This ensures that you can postpone the inheritance beyond the age of majority. For example, you may wish a child to receive his or her inheritance at the age of 25.
- From a tax savings point of view, a trust which takes effect after your death receives special tax treatment. The trust is taxed at a rate based upon the value of the trust. The benefit of this is substantial when you want to leave money to a number of separate individuals. If you set up a different trust for each one of your children, for example, the overall amount of tax they would pay is reduced as each trust is taxed separately.

Trusts Made During Your Lifetime

There may be situations where you want to simply give away your assets before you die. One way of accomplishing this is to create a trust for the benefit of

a family member while you are still living. The benefits of this kind of trust are:

- You can transfer assets and wealth into a trust for your family. Depending on when the trust was made, this strategy ensures that your family will be provided for since none of your creditors can get at money once it is placed into this kind of trust. *Creditors* are individuals and institutions to whom you owe money now or in the future. It includes having been unsuccessful in a lawsuit, paying support payments to a former spouse and child, loan agreements with a bank, being held liable for an accident or for negligence.
- Setting up a trust will lessen the amount of probate fees payable when your Will is probated.
- One drawback associated with this type of trust is that it is taxed at the highest income tax rate for individuals, which is approximately 50%.
- The use of trusts can keep money out of the hands of creditors. If there is a strong chance that your assets could be taken by creditors, transferring assets into a trust for your children can protect the money.
- If you want to provide money to your child while making sure that the money will be out of the reach of your child's creditors or spouse,

a correctly drafted trust will protect the trust from going to anyone other than the child.

- Parents can set up trusts for their children who are over 18 years old in order to minimize the overall amount of income tax the family pays;
- For people who own family businesses, it is possible to use a trust to transfer the value of the business from the parent to the child in such a way that most of the tax payable on the value of the business will not be due when the parent dies.
- If you are a new resident in Canada, it is possible to set up a trust in another country which allows your investments to accumulate outside of Canada and not be subject to Canadian tax for a period of 60 months after the person who set up the trust moves to Canada.

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