

Why trust a trust? – Trust Provisions

What is a trust?

A trust is where a person, for example a testator /testatrix (a person who makes a will,) gives money to persons they trust to essentially safeguard this money and invest it for the benefit of a nominated beneficiary i.e. the person to whom the money will ultimately come too.

Why not simply give the money to a beneficiary under a will ?

There are several reasons why on several occasions this cannot be done. The most frequent reason is that the beneficiary lacks capacity to receive the money directly. This would include children under the age of 18 or a person who would be considered vulnerable and in need of protection due to mental incapacity.

What are the principles of establishing a trust ?

The basic principles for establishing a trust are that the person who wishes to create one must clearly state that it is their intention to do so. If a trust is created in a Last Will and Testament then the wording that establishes the relevant provision must be very clear and precise, leaving no doubt that there is a clear intention that a legally binding trust should be established.

There must be clearly identifiable trust property that is settled on the trust. For example money which is stated as being for the specific benefit of a beneficiary or class of beneficiaries, for example grandchildren.

There must be clearly identifiable beneficiaries. Where the specific beneficiary is named within a trust then this would not normally create any difficulty at all. However where the trust is for a class of beneficiaries then the person who is drafting the trust provision must take care that the class of beneficiaries is clearly defined so that they are identifiable in order for the trust to succeed.

Who would normally be considered for a trust?

This would include children or provisions for people who are disabled and require care. Equally trusts can be created for charitable purposes.

What else should I consider with a trust?

Fundamentally, the right person to advise you and prepare it for you! The establishment of trusts can be a complex area and as such it is essential that you find a professional who is qualified to advise you on what you need! Also the creation of a trust can be a good time to do a financial health check!