

Trusts

Estate Planning & Trusts

Trusts

A Brief Introduction



TEECE HODGSON & WARD | SOLICITORS

1 Chifley Square Sydney NSW 2000 Telephone 02 9232 3733 Facsimile 02 9231 6093

SOME COMMON PHRASES

A Trust is a legally binding relationship between one person ('the Testator' if the trust is created by Will or 'the Settlor' if the trust is created during lifetime) who transfers assets ('the Trust Fund') to a person or groups of persons ('the Trustees') who then hold the assets for the benefit of an individual or group of individuals ('the Beneficiaries')

The Trustees must administer the Trust Fund in accordance with the powers, provisions and obligations set out by the Testator in the document which created the Trust. In the case of a 'Testamentary Trust' (or a Will Trust as it is also known) this would be the Testator's last Will.

Invariably there will also be a person nominated ('the Appointor') to oversee particular actions of the Trustees and in some cases, have the power to remove Trustees should they not be carrying out their duties in the correct manner.

The Trust Fund can consist of a wide variety of assets including land, cash, shares or even antiques that formed part of the Testator's estate.

Generally speaking, the maximum period that a Trust can run for is 80 years but within those parameters a Trust can last for any length of time as the Testator and Trustees see fit, be it during widowhood, until a child marries or a grandchild attains a certain age.

WHY CREATE A TESTAMENTARY TRUST?

A Testamentary Trust creates a structure by which your Trustees can administer your Trust Fund in a flexible manner to deal with your particular circumstances. Common reasons for creating a Will Trust include:

- Controlling and protect family wealth across the generations
- Income Tax and Capital Gains Tax efficiency
- Providing for a person who is either incapable of managing their own affairs or vulnerable to exploitation
- Creating a structure that allows a spouse or partner to benefit during their lifetime whilst ensuring that children (including those from a previous marriage) are financially provided for in the long term.
- Postponing the entitlement of a young child or adult until they are older or have settled down in life whilst allowing money to be spent for their benefit in the meantime.
- Protecting family assets from potential risks of bankruptcy and family breakdown.

WHAT OTHER TYPES OF TRUST ARE THERE?

- Family Trusts are discretionary trusts under which the Trustees have the power to decide how much income or capital, if any, to pay each of the Beneficiaries. The Beneficiaries have no right to income or capital, merely a hope that the Trustees will exercise their discretion to their benefit.
- Superannuation or Death Benefit Trusts are created as a repository to receive lump sum death benefits from a super fund. These can benefit from concessional tax treatment and provide a flexible structure under which specific dependents can benefit.
- Trusts can also be established for charitable purposes to meet the philanthropic intentions of individuals and companies.



CAN I CONTROL THE TRUST?

A simple but highly recommended measure is to leave a non-binding letter or 'Statement of Wishes' which sets out your reasons for creating the Trust and how you would like the Trustees to exercise their powers. You can also request that the statement is not disclosed to Beneficiaries.

As a Settlor you can name yourself as a Trustee effectively giving yourself a veto over future Trustee decisions. You can also impose requirements on the Trustees that they require your consent before exercising certain powers (such as appointing capital to Beneficiaries).

Another popular manner in which to check Trustee powers is to nominate an Appointor who has the power to appoint and dismiss Trustees as well as placing an obligation on the Trustees to obtain the Appointor's consent prior to them exercising specified powers.

Whilst these measures can be effective the most important decision will be the one choosing your initial Trustees. The position of being a Trustee is an onerous one and you need to be completely satisfied that your Trustees will carry out their duties and obligations in a lawful and trustworthy manner.

WHAT DUTIES DO TRUSTEES HAVE?

Trustee responsibilities depend on the type of trust and the specific terms of the Trust Deed or Will. In general the duties and obligations of a Trustee will include:

- Ensuring that they understand the terms of the Trust Deed or Will and act accordingly
- Acting impartially and unanimously and taking reasonable care when exercising powers
- Keeping full records of all trust assets and income/capital movements and keeping Beneficiaries suitably informed
- Notifying the ATO of relevant tax events
- Not benefiting from your position as a Trustee unless specifically allowed

HOW CAN TEECE HODGSON & WARD ASSIST?

As with all estate planning decisions your particular situation needs to be carefully considered before a structure can be created that is suitable for your circumstances and intentions.

If you require further information or advice concerning the above please contact Richard Neal, Deborah Linwood or John Maitland using the following contact details.

✉ mail@teece.com.au

☎ 02 9232 3733

Level 10, 1 Chifley Square,

Sydney NSW 2000

This Information sheet is intended to provide general information about current law relating to Trusts. It is not intended to be comprehensive or to provide any specific legal and / or tax advice and should not be acted or relied upon as doing so. Professional advice appropriate to a specific situation should always be obtained.

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