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Property & Family Settlement Trusts
Questions & Answers

Background:

A trust enables an individual or a couple (legally known as 'settlors') to gift assets, but on terms decided by the settlor(s) – this is usually for the benefit of one's children, grandchildren or other family members Legally, ownership passes from the settler(s) to the trustees, who become the new legal owners.

What Is A Family Settlement Trust?

A trust that is created in your lifetime which can receive your assets eg. property and savings, up to the value of the inheritance tax threshold (currently £325,000)

The settlor can continue to be a trustee and remain in control of assets.

Family Trusts can help you and your family avoid some of the following:

1. Probate Fees/delays/cost:
Usually, estates go to probate if they are held in a sole name and exceed £10,000. This is most common in respect of widows/widowers. The scale of costs varies but is typically between 2 - 5% of the entire estate including the property value.

Assets in a family trust can be sold immediately after death without the need for probate, and distributed in accordance with your Will.

2. Care Home Fees:
The future funding of care fees plays heavily on people's minds. It is estimated that 20,000 homes a year are currently sold to meet the care bill.

If your assets exceed £23,500 you are expected to pay all your fees and when capital reserves are exhausted, your property may well be sold. At current rates, 6 years in care would cost the proceeds of a property valued at £150,000. If your home is placed in a family trust it is highly unlikely that it can be used toward these costs.

3. Mental Incapacity
A way of obtaining help with your finances, should you lose capacity, is to prepare a Lasting Power of Attorney. A family trust will work in the same principal but without having the need to apply for registration at court. A family trust will enable you to retain full control of assets with the help of other trustees – namely your close family members.

4. Bankruptcy
Subject to conditions, placing assets in a trust may mean they are not seized if you or your children, after your death, become bankrupt.

5. Claims on your estate
Some people are concerned that a claim may be made on their estate on their death – for example by estranged children, ex spouses etc. All assets within the trust are safe from such claims.

6. Remarriage Problems
Anyone who remarries faces the problem that if their assets go to their new spouse when they die, their own children may be disinherited. This will not happen to assets within a family trust.

7. Children with Problems
If you have children with drink, drug or gambling problems, or just 'spendthrifts', they may benefit from some independent control over their inheritance.

8. Children's Divorce
Assets in a living trust are protected from loss if the worst comes to the worst and your children divorce in the future. The assets held within the trust are sheltered from any divorce proceedings.

Frequently Asked Questions

a. Who are these trusts aimed at?
Anyone who is worried about the problems mentioned above. They are mainly aimed at middle income clients with houses worth £180-£400k and other assets of around £100,000. The people who are keenest to ensure their estate is passed to children and family rather than the state.

b. Do I have to tell the Inland Revenue
Whilst you still live in the home tax matters should not have a great impact. Even after a sale it should be straightforward. The trust must be registered with the HMRC and an annual tax return completed. This is straightforward where only a property is included as no 'income' is received, therefore no tax payable.

c. Do Family Trusts save Inheritance Tax?
No. These trusts are classed as 'life interest' in order to allow the client to remain a beneficiary. The assets remain part of your estate for inheritance tax purposes. However, please note that if at the end of the ten years the value of the trust is above the then exempt amount for IHT, a small amount of inheritance tax may be payable on the excess. This can be avoided by paying out of the Trust Fund prior to the tenth anniversary.

d. Do I pay Capital Gains Tax:
There should be no CGT payable on the transfer of your home into the trust. Principal Private Residence exemption applies to this transfer and subsequent sales. If you no longer live in the property then the sale may be subject to CGT.

e. Do I pay Income Tax:
There is no income tax chargeable on the creation of the trust. Whilst you continue to live in the property you do not pay rent for living there. However if you rent the property out then you must pay tax on the income. Also if the house is sold and money invested then tax must be paid on any income generated.

f. What about this 'pre owned asset tax'?
In some situations when property remains occupied by a person who has disposed of it, a special charge to income tax applies. This does not apply where you have an interest under a family trust. It only applies to special circumstances where inheritance tax is trying to be saved. A family trust will not mitigate inheritance tax.

g. Who are the trustees?
Typically we would recommend that your family act as your trustees – providing you trust them and feel they would be willing to carry out your wishes when you are gone – it is also possible to appoint independent trustees if necessary. In your lifetime, you will control your trustees with the ability to appoint new trustees or remove existing ones if you so wish.

h. What happens if I want to move?
If you wish to move after placing the house into the trust you can do so. The trustees would sign the paperwork but there are no restrictions on you. Any surplus cash is still protected by the Trust and will simply be added to any other savings and investments by the trustees.

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i. Can other assets apart from the house be placed in the trust?
We usually recommend placing the property into the Trust. Also we recommend that any other savings or investments over £23,500 be placed within a Bond for protection of any cash assets.

j. Is the Trust guaranteed to work to solve the problems mentioned?
In respect of probate fees it is guaranteed. With regard to care fees, transfers into a trust made before 5 years may be challenged but it is up to the Local Authority to prove deliberate deprivation. This will be difficult to do unless done within 6 months of entering a care home.

k. How long does the trust last and what circumstances end it?
The trust can last for a maximum period of 80 years but will usually be closed down by the Trustees on the death of you or your spouse.

There may be circumstances where it is desirable to continue to run the trust for longer.

l. Is there a limit on what can be put into the trust?
Yes. Anything over the current nil rate band (£325,000) per person will attract a 20% entry charge. It is sensible however to convey a small share of the residence (if over this value) and argue that the remaining share of the house has no resale value.

m. Will I still need a Lasting Power of Attorney?
It is advisable so that assets not placed within the trust can be dealt with in the future.

n. Do I have to keep any records?
It is sensible for trustees to keep records of receipts and payments and other transactions relating to the trust. The trustees should meet at least once a year to discuss the terms of the trust and the practical issues such as repair and maintenance of the property.

o. Who insures the property?
If the home is placed into a trust then the building insurance must also be in the names of the trustees. Contents cover should remain in your own name.

p. Is it worth the fee?
Placing assets into a family trust reduces any costs in relation to administering your estate and potentially saves your estate being eroded by around £25,000 a year (average cost of nursing care).

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