

# A Guide to Trusts

**This is a brief guide designed to explain the basic features of our trusts. It explains what is meant by a trust and some of the potential advantages and disadvantages of creating a trust.**

**We are not able to advise you on your individual circumstances, and should you have any questions or be uncertain about placing your policy under trust, you should seek appropriate professional advice.**

**This guide is based on our understanding of current law and HM Revenue and Customs' practice as at July 2010.**

## **What is a trust?**

In broad terms, a trust is simply a way of gifting property without giving the recipient (the donee) full access to the gift. Any type of property – shares, buildings, cash etc. can be placed under trust. You can also use a trust to make a gift of a life assurance policy on the terms set out in the trust document.

The person who creates a trust (the settlor) chooses the people who can benefit (the beneficiaries) and defines how and when they are able to enjoy the gifted property. Whilst the property forms part of the trust, it is held and administered by the trustees for the benefit of the beneficiaries. Once the trust is up and running, the trustees must administer it according to the terms contained in the trust deed.

You could contrast the position with that under your Will, which you can change as often as you wish whilst you are alive. Gifting a life policy under a Will may not secure the benefits obtained from writing the policy under an appropriate trust.

Given the above, you should satisfy yourself that the proposed trust wording is capable of meeting your requirements over the long term, accommodating, as far as is possible, any foreseeable changes to your personal circumstances.

## **What are the advantages of writing a policy under trust?**

There are several advantages in writing a life policy under trust. These can be summarised as follows:

- Immediate payment of the policy proceeds on death without awaiting probate
- Inheritance tax (IHT) benefits
- Limited protection in bankruptcy
- Placing the right money in the right hands at the right time.

## **Avoidance of probate**

In the event of death, payment of the policy proceeds can be made to the surviving trustees on production of the death certificate, without waiting for your personal representatives to obtain a grant of probate or letters of administration. It is therefore important to ensure that you are not the sole trustee. It is obviously an advantage to have the policy proceeds paid out promptly on death, rather than the frustrating alternative of your dependants being unable to obtain the proceeds for what may be many months.

## **Inheritance tax (IHT)**

With most trusts, any investment growth on the trust assets falls outside your estate for inheritance tax purposes. Gifts to the trust (such as the initial trust property) fall outside your estate after you have survived for seven years from the date of making the gift, although there are a number of valuable inheritance tax reliefs and allowances that can reduce the amount that falls back into your estate should you die within this seven year period.

## **Limited protection in bankruptcy**

A policy held in trust will usually be safe from creditors unless you effect the policy whilst insolvent or knowing of your impending insolvency. A statutory trust will provide greater protection from creditors than a non-statutory trust.

## **What are the potential disadvantages of writing a policy under trust?**

There are some potential disadvantages that you should consider before creating a trust. These include:

- Once created, a trust cannot be cancelled, and it may be difficult, expensive or impossible to vary the provisions at a later date.
- The creation of a trust may affect your other circumstances, particularly your tax position, and professional advice should be sought before creating a trust.

## **What trusts do you offer?**

We offer two different types of trust:

### **Statutory trust**

This type of trust can only be used at the policy application stage and for single life policies only. Beneficiaries are restricted by statute and may only include:

- The legal wife/husband or registered civil partner of the settlor. Unmarried partners may not be included; and/ or
- The children (including illegitimate and/or legally adopted children) of the Settlor – but not step-children or grandchildren.

### **Non-statutory trust**

This type of trust may be used with single or joint life policies, and may be used with new applications or existing policies. The settlor has a choice of the beneficial trust provisions under this Trust:

- the policy can be held for the absolute benefit of named individuals, in specified shares
- the policy can be held on a discretionary basis, where the Settlor and/or Trustees will decide who, from the class of beneficiaries specified in the trust, will receive benefits, how much and when.

### **Who may be a settlor?**

Any adult who is of sound mind. A child cannot create an effective trust.

### **Who may be a trustee?**

Any individual, except minors and those of unsound mind, may act as a trustee. It is advisable to have trustees who are resident in the UK. Also, from a practical viewpoint, it makes sense to have trustees who are easy to contact and likely to keep in touch. A beneficiary can act as a trustee, but cannot receive benefits from the trust unless there is at least one further trustee. A bank, solicitor, accountant or other corporation may act as trustees, however, they may charge for their services.

As applicant/ settlor you will have the responsibility of selecting trustees. You should choose trustees who are likely to understand, and act in broad accordance with, your wishes, although, of course, they will be constrained by the wording of the trust. The choice is particularly important in relation to "discretionary" trusts as these give the trustees discretion over who eventually receives the policy proceeds, how much and when. It should be appreciated that, by its very nature, trusteeship can be a long-term commitment.

### **What are the trustee's duties?**

With a life assurance policy under trust, the trustees may do little more than sign the trust form at outset, and eventually receive the policy proceeds for onward transmission to the beneficiary or beneficiaries. However, it should be appreciated that the end of the policy does not necessarily mean the end of the trust. The terms of the trust might require all or some of the policy proceeds to be reinvested, for instance, if the beneficiaries are young children. At that stage, trusteeship may become more demanding. Although trustees are not expected to have any specialist knowledge they do not already possess, they might be liable to the beneficiaries for any loss caused by an unreasonable or poor choice of investment. This possibility should be considered when choosing trustees. The company will require the written authority of all the trustees before paying out the policy proceeds. Under the law of England, trustees will need to act unanimously in exercising their powers under the trust, whereas under Scots law, a simple majority will suffice.

### **How many trustees are needed?**

Normally at least two trustees are appointed at outset. For ease of administration, the number of trustees is usually limited to three or four. Whilst property is held in trust, the trustees are the joint legal owners of the property and hold it for the benefit of the beneficiaries. We will therefore require agreement from each of trustee when making any changes to the trust, even for seemingly trivial changes to the policy. For this reason, too many trustees can be more of a hindrance than a help.

### **Can trustees be changed?**

Yes, new trustees can be appointed, and retiring trustees can be removed using a Deed of Appointment and/or Retirement of Trustees. As settlor, you have the power to appoint trustees during your lifetime. Most trusts will allow you to remove trustees without their consent. If, at any time, you become the only remaining trustee, you should appoint one or more new trustees to act with you.

## Who can be a beneficiary?

This depends on whether you choose a statutory or non-statutory trust. Our statutory trust limits beneficiaries to specific persons, while the non-statutory trust allows a wider range of beneficiaries including any individual, charity or other legitimate organisation. The beneficiary has what is known as an equitable interest, rather than a legal interest in the policy. For this reason, we do not act on the instructions of the beneficiary but on those of the legal owners - the trustees.

If you use a "discretionary" trust, make sure that the people or organisations you may wish to benefit are included in the list of potential beneficiaries. It is very important to note that, for taxation reasons, you will not be included as a beneficiary under the trust, preventing you from taking any benefit from the policy.

As stated earlier, it is important to check that the intended trust wording meets your requirements and is acceptable to you.

## Can I "cancel" a Trust?

Once the policy has been effected under trust, you will not have the power to terminate or cancel the trust and return the policy to yourself. The only action that you can take is to stop paying any regular premiums.

## What should I do next?

If you have decided that you do not wish to place your policy in trust, then you need not take any further action. You can change your mind and use a non-statutory trust at any time in the future.

If you have decided that you would like to use a trust, please complete the relevant trust form and return it to our customer services department.

**Remember you must ensure that the trust meets your needs, and should consider taking professional advice if you have any doubts.**



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