

# Statutory Trust request

## for use with an application for a National Friendly policy

(Married Women's Property Act 1882)  
(Married Women's Policies of Assurance (Scotland) Act 1880)  
(Law Reform (Husband & Wife) Act (Northern Ireland) 1964)

### **This Trust should be used with single life applications only.**

Standard trust forms are designed to be suitable for the majority of people wishing to establish such trusts, but it must be recognised that they cannot be suitable for all, and, therefore, prospective settlors or donors are encouraged to seek independent legal advice before establishing such schemes.

*NB In this Trust form and accompanying notes,*

- (i) use of the singular includes the plural, and vice versa*
- (ii) Use of any gender includes the other genders*

### **Points to be considered**

Before writing a policy in trust, you should ensure that the trust provisions meet the requirements and intentions of the Settlor as it may be difficult, impossible or expensive to vary the provisions at a later date. The person applying for the policy will be the Settlor. In the case of a statutory trust the Settlor will always be the life assured.

It should also be borne in mind that a policy written in trust has certain limitations. Only the Trustees (one of whom can be the life assured), with the powers given to them under the Trust and under general law, may:

- (a) take a loan from the policy
- (b) use the policy as security for a loan
- (c) surrender the policy
- (d) deal with the policy in any way within the conditions laid down in the policy contract

### **Advantages**

However, there are many advantages of having a policy issued under a statutory trust. For example:

- (a) claims can be settled more quickly (provided that the Settlor (life assured) is not the sole Trustee), as payment of the claim can be made before the granting of Probate or issuing of Letters of Administration
- (b) the proceeds from the policy are not aggregated with the estate of the life assured on death and are therefore not subject to inheritance tax when paid
- (c) if, under the terms of the Trust, every beneficiary only takes an absolute interest in a stated share there is no liability to inheritance tax on distribution to beneficiaries. This may not apply if it is left to the Trustees to determine the Beneficiaries' entitlements
- (d) the statutory trust provides greater protection from the Settlor's creditors than a non-statutory trust. If the Settlor effected the policy whilst knowing of his insolvency, the creditors can only claim the amount of the premiums paid. Otherwise, the Settlor's creditors have no further claim on the policy proceeds

## Beneficiaries

The class of persons who can benefit under this Trust (called the Beneficiaries) is restricted by the statute that governs the Trust and may include only the following:

- (a) the legal wife or husband, or registered civil partner, of the Settlor. Unmarried partners cannot be included
- (b) the children (including illegitimate and/or legally adopted children) of the Settlor – but not step-children or grandchildren

## Trustees – selection and qualification

It is recommended that more than one Trustee is appointed. Trustees are appointed at the outset and may include:

- (a) the Settlor
- (b) the Settlor's spouse or registered civil partner
- (c) any other person aged 18 or over who is prepared to accept the responsibility of seeing that the benefits of the policy are applied in accordance with the provisions of the Trust. Although there is no legal bar on an adult child of the Settlor's being appointed as a Trustee, it is advisable to always ensure that there is at least one independent Trustee who does not stand to benefit under the terms of the Trust
- (d) a solicitor, accountant, a bank or other corporate trustee. They may, however, charge for the service.

Further Trustees can be appointed by the Settlor or, after his death, by the Trustees. The Settlor can also remove a Trustee provided at least two Trustees remain and at least one is a person other than the Settlor and his or her spouse.

To achieve the aims of the Trust efficiently, all Trustees should be UK resident. It is unwise for a Settlor to appoint his or her spouse as the only other Trustee, as, if both were to die together, for example in a car accident, the benefits could not be dealt with by anyone except the Executors (if a Will exists) or the Administrators of the deceased's estate, and only then after a Grant of Probate or Letters of Administration have been obtained. This may defeat one of the primary objects of setting up the Trust. Trustees appointed should be those whose chances of surviving the Settlor are good. If there are no surviving Trustees on the death of the Settlor, time will be lost before the proceeds can be paid to the Beneficiaries.

## Important notes

**1** Under no circumstances can a National Friendly employee allow himself or herself to be named as a Trustee except in own life or immediate next of kin (spouse, registered civil partner or close blood relative) cases. Such an appointment would be wholly undesirable from the point of view of the Society.

**2** Although this Trust (and the explanatory notes) are intended to cover trusts to be set up under the Married Women's Property Act 1882, Married Women's Policies of Assurance (Scotland) Act 1880 or Law Reform (Husband & Wife) Act (Northern Ireland) 1964, it is important to note that trusts set up under either the Scottish or Northern Ireland legislation are subject to slightly different legal terms and provisions. Anyone considering the establishment of a trust is advised to take specific legal advice in the appropriate jurisdiction before proceeding. Neither the Society nor any of its agents or employees accept any responsibility for any loss arising as a result of the use of the Trust Deed or in reliance on the information contained in this document.

## Guidance to completion of the Trust

**Note:** The Trust form must be completed, dated and signed at the same time as the proposal form, and submitted with it.

### (i) Introduction to trust

- Insert the date of the request and application.
- Insert the type of policy (e.g. 'Endowment Policy' 'Whole of Life Policy').
- Insert the full name of the proposer (Settlor).
- Delete the statutes that do not apply to your Trust e.g. delete MHPA (Scotland) Act and Law Reform (Husband & Wife) Act (Northern Ireland) if you live in England.

### (ii) Beneficiaries (PART 1)

The draft provides five optional clauses – the proposer must choose one, depending on his or her requirements, by initialling the appropriate box. **Think carefully before completing these sections. This choice cannot be altered later.**

- Initial the box next to the beneficial provisions you wish to apply to your Trust. **Only initial one box.**
- If selecting clauses (a), (c) or (e), delete references to "husband", "wife" and "registered civil partner" as appropriate.
- You do not have to name your spouse and/or child(ren) in clauses (a) and (b), but you may wish to because, if you do not, then the spouse and/or children in existence when the Policy benefits become payable will benefit. If you insert the names of the relevant individuals then only those named (or their estates) will benefit.
- Clause (c) gives the Trustees the flexibility to appoint benefits amongst your spouse, registered civil partner and/or children. However, selecting this option may result in Inheritance Tax liabilities arising on each tenth anniversary of the creation of the Trust and on capital distribution from the Trust. You should take appropriate tax advice before selecting this option.

### (iii) Additional trust terms (PART 2)

In clause (iv) delete references to "wife", "husband" and "registered civil partner" as appropriate.

### (iv) Appointment of first Trustees (PART 4)

Delete the words: "Myself (the Settlor) and" if you do not wish to be appointed as a Trustee.

Then insert the names and addresses of the additional Trustees.

The Trustees must sign to evidence their agreement to their appointment and insert the date of their signature.

### (v) Signature (PART 7)

The Settlor should sign the Trust form and insert the date of signature in words and figures (eg. 8th day of July 2010).

**Trust Request** relating to a proposal for a policy to be issued by **National Friendly (the Society)**.

This request is to be read and construed with the proposal

dated

for a  (please insert type of policy)

I,  (please insert Proposer's full name)

("the Settlor"), hereby request that the policy to be issued pursuant to my above proposal ("the Policy") shall be issued under the \*Married Women's Property Act 1882, \*Married Women's Policies of Assurance (Scotland) Act 1880 or \*the Law Reform (Husband & Wife) Act (Northern Ireland) 1964 on the terms stated below.

\*Delete whichever two do not apply

### PART 1 Beneficiaries

The Policy, all the moneys payable thereunder and any property for the time being representing the same (from now on called "the Trust Fund"), is to be held for the benefit of the individual(s) I have indicated by initialling one of the boxes below and subject to the additional terms specified in Parts 2 and 3 of this Trust Request:

(a) my (wife) (husband) (registered civil partner)

\_\_\_\_\_ absolutely

(b) my child(ren) named below and in the shares specified

Full name	Date of birth	Amount of interest (% of policy proceeds)

and if more than one and no shares are specified then in equal shares and in either case absolutely and if no children are named then all my children in equal shares absolutely

(c) such of my (wife) (husband) (registered civil partner) and/or children as the Trustees of this Trust being at least two in number may in their absolute discretion not later than two years after my death appoint and subject thereto and in default of any such appointment for the absolute benefit of such of my children as are alive immediately after the event resulting in the payment of the benefits under the Policy in equal shares absolutely, and if there are none so surviving then for the absolute benefit of the last of my children to have died

(d) such of my children as are alive immediately after the event resulting in the payment of the benefits under the Policy in equal shares absolutely, and if there are none so surviving then for the absolute benefit of the last of my children to have died

(e) my (wife) (husband) (registered civil partner) if alive immediately after the event resulting in the payment of the benefits under the Policy failing whom such of my children as shall survive the event and if more than one in equal shares absolutely, and if there are none so surviving then for the absolute benefit of the last one of my spouse and children to have died

## **PART 2 Additional trust terms**

- (i) Subject as provided below, the Trustees (being at least two in number or a trust corporation) shall have power to pay income of the Trust Fund to
  - (a) any adult capable of benefiting under this Trust
  - (b) any child of mine who is under the age of legal capacity provided such payment is for or towards his maintenance, education or benefitas the Trustees may in their absolute discretion think fit and the Trustees may accumulate the balance of such income for a maximum of 21 years from the date of my death. Any accumulated income will be added to the Trust Fund. S31 Trustee Act 1925 shall not apply.
- (ii) The Trustees (being at least two in number or a trust corporation) shall have power to pay transfer or apply the whole or any part of the capital of the Trust Fund as they shall in their absolute discretion think fit for or towards the advancement or maintenance, education or benefit of any individual capable of benefiting under this Trust. S32 Trustee Act 1925 shall not apply.
- (iii) The exercise of the powers in (i) and (ii) are subject to any contrary exercise of the power in paragraph (c) of Part 1 should that power apply to this Trust.
- (iv) The powers in (i) and (ii) above will not apply if paragraph (a) of Part 1 applies to this Trust except where my (wife) (husband) (registered civil partner) lacks capacity within the meaning of the Mental Capacity Act 2005 or its statutory equivalent.
- (v) The powers in (i) and (ii) above will not apply if paragraph (b) of Part 1 applies to this Trust and all my children or the children named therein as appropriate are of full age and capacity.
- (vi) It shall not be possible for the Settlor to benefit under this Trust in any circumstances whatsoever and in no circumstances will the Settlor have any right whatever by way of lien or otherwise to reimbursement of any sums paid or provided by him to keep up or reinstate the Policy.

## **PART 3 Trustees' Powers**

In addition to any powers conferred upon them by law the Trustees shall have the following powers:

- (i) All the powers of an absolute owner in respect of the Policy (or any life assurance policy forming part of the Trust Fund) including the power to exercise any option or to sell or realise any such Policy or policy or to convert the same to any other form of assurance.
- (ii) Power to borrow money on the security of the Policy (or any life assurance policy as aforesaid) in order to pay any overdue or future premiums or any other sum necessary for maintaining the Policy or policy in force.
- (iii) Power to mortgage, surrender or otherwise deal with the said Policy (or any life assurance policy as aforesaid) in such manner as the Trustees shall in their discretion consider appropriate.
- (iv) Power to invest or apply the Trust Fund in the purchase or acquisition of either income or non-income producing assets including other life assurance policies or such stocks, funds, shares, securities or other investments or property, of whatever nature and wherever situated and whether involving liabilities or not with or without security as the Trustees in their absolute discretion shall think fit with the intention that the Trustees shall have the same powers as absolute owners who are beneficially entitled.
- (v) Without prejudice to the generality of the foregoing, the Society shall not be concerned to inquire for what purpose any money may be borrowed under the provisions of the Policy or otherwise nor to see to the disposal or application of any money paid to the Trustee or Trustees for the time being.

## PART 4 Appointment of first Trustees

I hereby appoint the following persons to be Trustees (which term shall include any trustee for the time being hereof) of the Trust Fund:

**Myself (the Settlor) and we the undersigned hereby agree to accept the duties of Trustees**

(i) Full name	Signature
Address	
Occupation	

(ii) Full name	Signature
Address	
Occupation	

(iii) Full name	Signature
Address	
Occupation	

## PART 5 Appointment of additional Trustees and dismissal of Trustees

- (i) The power of appointing new or additional Trustees shall be vested in the Settlor during his lifetime and thereafter in the Trustees and every appointment of a new or additional Trustee or Trustees shall be by deed and notice in writing thereof shall forthwith be given to the Society.
- (ii) The Settlor during his lifetime will also have power by deed to dismiss any Trustee provided at least two Trustees remain after such dismissal, one of whom is not the Settlor or the spouse of the Settlor for the time being.

## **PART 6 Remuneration and liability of Trustees**

- (i) Any Trustee (other than the Settlor or the spouse of the Settlor for the time being) being a solicitor or other person engaged in any profession or business shall be entitled to charge and to be paid all usual professional or other charges for business done by him or his firm in connection with this Trust whether in the ordinary course of his profession or business or not.
- (ii) In the execution and administration of this Trust no Trustee shall be liable for any loss to the Trust Fund arising by reason of any investment made in good faith by any Trustee or by reason of any other matter or thing except wilful fraud or wrongdoing committed by the Trustee who is sought to be made liable and, in the case of a paid Trustee, negligence.

## **PART 7 Signature**

Dated this  day of  20

Signature of Proposer



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