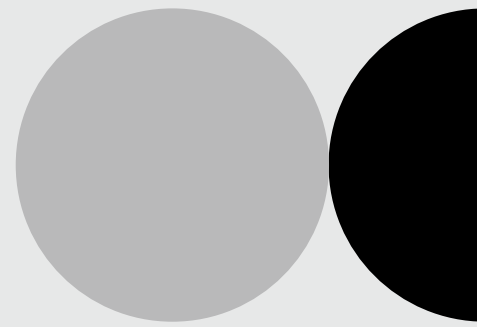


# Wills, powers of attorney and trusts



## Wills



Our will is where we say how we would like to pass on our estate when we die. It's about taking control of your legacy and making sure that sure you leave as much as possible to the people you want. Importantly, if you don't have a will in place, various legal rules will say who will receive what, which might not reflect your wishes.

Wills also allow you to use trusts so you can keep control and protect family assets even after you've gone. They also make things easier, quicker and avoid unnecessary expense for your loved ones at an already difficult time.

Because of that, we generally all know we should have a will but lots of us put it off or do one and then forget about it, even as our circumstances change. That can cause real problems.

### Thinking about putting a will in place

The starting point for any estate planning exercise is understanding what makes up your estate. That means having a list of everything you own and everything you owe. Not only will that help you see what your legacy might look like but it will also enable you to see if you could also be passing on an inheritance tax bill to your loved ones and to understand whether and to what extent you would like to steps to reduce that. You can read the Guide on understanding inheritance tax if you're interested in knowing more about this.

Once you know what's in your estate, you need to look around you at the people in your life to understand who you would want all or parts of that estate to pass to. You also need to think about whether you're happy that they get their share as soon as it can be paid from your estate or whether you would want that payment to be delayed, perhaps until young beneficiaries reach a certain again or until it's the right time for some other reason. Perhaps you are concerned about beneficiaries getting divorced or having financial issues. Trusts can come into play here and we cover them on more detail later in this Guide.

Third is deciding who you trust to make sure your instructions are carried out – those people will be your executors.

And it's really important that all of these decisions are made taking into account your circumstances, your goals, your concerns and your hopes and those of your beneficiaries.

Here's a list of specific questions that it's helpful for you to think about:

1. Who would you like to be responsible for making sure your instructions are carried out? These people are called your executors and you should name at least two people. These people can also be beneficiaries.
2. Would you like to gift any specific assets or sums of money to an individual or a charity?
3. You want to make sure that what you've worked hard for passes to the right people. These people are called your beneficiaries. Who are those people for you?
4. Who should receive each beneficiary's share if they're not around to benefit, for example because you outlived them?
5. Are you concerned any of the people you've chosen as beneficiaries:
  - a) Are too young to inherit straightaway? Yes  No
  - b) May not be able to look after the money themselves? Yes  No
  - c) May remarry or divorce? Yes  No
  - d) May go into care? Yes  No
  - f) May experience financial difficulties? Yes  No
  - g) Are in receipt of means-tested benefits? Yes  No
  - h) Suffer from ill health? Yes  No
6. If you have school age children, who would you want to look after them if you and their other parent have died? These people are called their Guardian(s).
7. Do you have any funeral wishes?



Once you have your answers ready, you may feel ready to put your will in place using a 'DIY' service or you may want to speak to a professional adviser to talk through the options you have in detail and how you can achieve exactly what you want. Some people don't wait until this stage to talk to an adviser and actually work with them on all the steps set out above. It's about doing what's right for you.

## Once your will is in place

Your will can quickly get out of date as your circumstances change so as a minimum, you should have a look at it every 3-5 years to ensure it still reflects your wishes. If you move house or you or any of your beneficiaries have any other significant life events such as getting married/separated/divorced, suffer a bereavement, have a child/grandchild, come into an inheritance or other new money etc then you should review your will, even if you only looked at it or had it done recently.

## Powers of Attorney (PoA)



A power of attorney document says who you would like to make decisions on your behalf so whilst your will is about taking control of your legacy after you've passed away, your power of attorney is about taking control of your decision making during your lifetime. Both documents are equally important.

Many of you will have heard of Powers of Attorney but may have assumed they are only for elderly people who are struggling to look after their own affairs. Whilst that's one of the main uses for them, more and more younger people want to make sure that the plans and arrangements they are putting in place can stay on track even if they can't make the decisions themselves for any reason. You hope to never need it, a bit like insurance, but you have peace of mind that if you do, it's there.

Having a properly written and registered PoA in place will reduce delays and expense and make things much easier for your loved ones at what might already be a difficult time. That's because if you don't have a PoA in place and decisions need to be made on your behalf or instructions need to be given on your behalf (perhaps because you need to make payments from your bank account, manage your savings and investments or even sell your house to go into care), the court will need to appoint someone. This can be very expensive, take a long time and be an emotionally difficult experience for your family.

## Types of Powers of Attorney

The Powers of Attorney that can be used if you lose the ability to make decisions fall into 2 categories.

1. Property and finance
2. Health and welfare

## PoAs – what you need to think about

The most important decision is who you want to appoint, and that can sometimes be difficult. It should be the person or people who you trust completely to know what you would have wanted to happen and who will make decisions to make sure that happens. You can appoint more than one person and if you do, you need to decide if they can each act individually (and simply let the other know what they decided) or if they have to act together. You can also say who your second choice attorney should be if your first choice can't act for any reason.

The last big decision is whether there are any specific powers that you do or don't want your attorneys to have.

Again, as with wills, once you get to this stage, you may feel able to write your power of attorney yourself but many people will choose to work with a professional to make sure it's all correct.

## Registering your PoA

Once fully signed, your power of attorney will need to be registered with the Public Guardian's Office. There is a fee for this. Only registered Powers of Attorney can be used by an attorney to make decisions on your behalf.

## Trusts



Trusts are not just a solution for the very wealthy and, whilst they can be complex, when used in the right way, either as part of your will or as part of making lifetime gifts, they can be a valuable part of a financial plan. In this guide, we'll outline the various types of trusts available and how they can be used as part of an overall tax plan and/or to protect and preserve assets.

## What is a trust?

In a trust, assets are held and managed by one person or people (the trustee) to benefit another person or people (the beneficiary). The person providing the assets is called the settlor.

Different kinds of assets can be put in trust, including:

- cash
- property
- shares
- land

Once in the trust, these assets will often be referred to as trust property.

Trusts are set up for a number of reasons, including:

- to control and protect family assets
- when a beneficiary is too young to handle their affairs
- when someone cannot handle their affairs because they're incapacitated
- to pass on assets while a settlor is still alive
- to pass on assets when a settlor dies (a 'will trust')
- under the rules of inheritance if someone dies without a will (in England and Wales)

## Setting up a trust

Trusts can be set up at any time or written into your will. You will need to consider:

- what the assets are going to be
- who the trustees and beneficiaries will be
- how you want the trust to work

A specialist trust and tax adviser will then help you to understand your options, the tax implications of putting assets into the trust and for the trust once it is in place and will draft the trust deed. There is a lot of terminology when it comes to trusts – the main terms are outlined below.

### Settlers

The settlor decides how the assets in a trust should be used – this is usually set out in a document called the 'trust deed'.

Sometimes the settlor can also benefit from the assets in a trust – this is called a 'settlor-interested' trust and has special tax rules. This should be avoided if the trust is being set up as part of an inheritance tax planning exercise.

### Trustees

The trustees are the legal owners of the assets held in a trust. Their role is to:

- deal with the assets according to the settlor's wishes, as set out in the trust deed or their will
- manage the trust on a day-to-day basis and pay any tax due
- decide how to invest or use the trust's assets

If the trustees change, the trust can still continue, but there must always be at least one trustee at all times and at the start, there should be at least two.

It's very important that your trustees are people you trust and can rely on and that you make sure they're happy to take on this responsibility.

### Beneficiaries

There might be more than one beneficiary, like a whole family or defined group of people. They may benefit from:

- the income of a trust only, for example from renting out a house held in a trust
- the capital only, for example getting shares held in a trust when they reach a certain age
- both the income and capital of the trust

## Types of trust

Trusts come in many shapes and sizes but the majority of trusts will be one, or perhaps a combination, of the following three types:

- A discretionary trust
- An interest in possession trust
- An absolute or bare trust

### Absolute/bare trusts

This is the simplest trust and is an arrangement where the settlor gives trustees cash or other assets to look after for a named beneficiary (or beneficiaries). The beneficiary(ies) cannot be changed after the trust has been set up.

Assets in an absolute/bare trust are held in the name of a trustee but the beneficiary is entitled to the trust fund and any income from it and, from the age of 18 (16 in Scotland), can demand that the trustees transfer the assets to them. Bare trusts are therefore often used to pass assets on to young people with the trustees look after those assets until the beneficiary is old enough.

Before setting up an absolute trust, you need to know who you want to benefit, be happy that you cannot change your mind and understand that if they are old enough, they will be able to get their share of the trust property whenever they want it.

If you're not comfortable with all or any of those points, then other types of trust, such as a discretionary or an interest in possession trust may be more appropriate.



## Interest in possession trust

Interest in possession (IIP) trusts give a named beneficiary (or beneficiaries) the right to any trust income. This beneficiary is often referred to as the life tenant of the trust (or life renter in Scotland). The right to income could also be satisfied by allowing the life tenant to benefit from the trust property without actually owning it. For example, it may allow them to live rent free in a residential property owned by the trust.

IIP trusts are quite common in wills. Typically, the surviving spouse is given the right to trust income for their lifetime (or the right to occupy the marital home) with the capital passing on death to designated children. These are usually referred to as life interest trusts (or life rent in Scotland).

## Discretionary trust

The trustees have complete control over the assets and the income those assets generate. The trustees can decide:

- how much income or capital is paid out
- which beneficiaries to make payments to
- when and how often the payments are made

The beneficiaries have no right to benefit from any of the trust assets or the income generated and in fact, some may ultimately get nothing at all if the trustees decide that that is the right outcome.

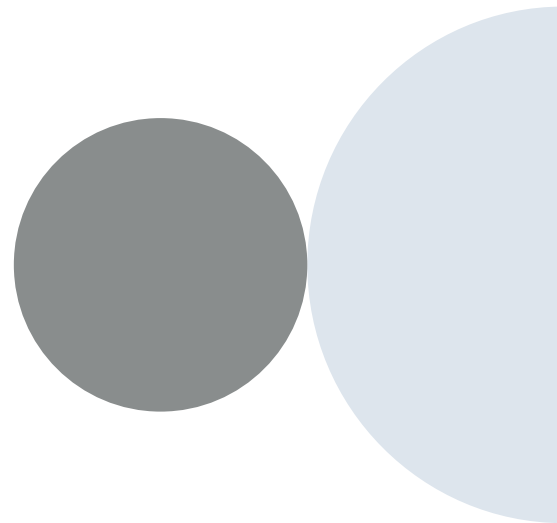
A discretionary trust may have named beneficiaries but will frequently contain classes of potential beneficiaries such as children, grandchildren and/or other family members. The settlor will normally be a trustee to ensure that the trustees' discretionary powers are exercised in line with their wishes.

To help guide the trustees in how to exercise their discretionary powers the settlor may provide them with an expression of wish sometimes known as a letter of wishes. This would not be a legally binding document but can provide clear guidance to the trustees.

The price for this level of control and flexibility is a more onerous tax regime than some other types of trust and in some case, this is a price people are willing to pay because of their individual priorities or concerns. Discretionary will trusts are still popular for non-tax reasons such as control, flexibility and asset protection.

## Mixed trusts

A trust may over time move between those different types and it may be more than one type at a time.



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