A Guide to Trusts

Our core purpose is
'HELPING CLIENTS ACHIEVE FINANCIAL SECURITY'

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WHAT IS A TRUST?

To put it simply, a trust is a relationship whereby an asset is held by one entity for the benefit of another. Each trust will have:

A trustee: the trustee is the person who holds trust property in their name for and on behalf of the beneficiary. This may be one or more individuals or companies.

A beneficiary: the beneficiary is the ultimate owner of the trust property and receives all benefits of it, but they do not manage it.

Trust property or assets: there must be trust property for the legal relationship between the trustee and the beneficiary to exist. Property may be anything of value (real estate, a contractual right, money, shares, intellectual property, even goodwill). Without any trust property though, the trust will immediately vest (end).

There are other roles relevant to different types of trusts, but every trust will have the above.

A trust is generally governed by a trust deed setting out the relevant roles and responsibilities and powers of the trustee and the way beneficiaries may receive or deal with the trust property.

A trust is also governed by certain legislation, but generally the terms of the trust deed will apply in priority where conflict arises between the two, except in relation to taxation or criminal sanctions.

FIXED TRUSTS

A fixed trust, as opposed to a discretionary trust, is a trust where the trust property and the benefits it derives are held for and provided to the beneficiaries in fixed proportions.

The two main examples are:

Bare Trust: A bare trust is the simplest of all trusts, as it only contains the three essential elements, and often only one asset as trust property.

A simple example of this is where a child has an asset but is not yet legally able to be registered as owner, on a bank account for instance.

A parent might list the asset or account in their own name and make decisions regarding it, but in every single respect it remains the asset of the child beneficiary.

Unit Trust: A unit trust is a more complicated structure whereby beneficiaries own units in the trust designating their ownership and rights attaching to the trust property. This is outlined in the unit trust deed.

This is a useful structure in that it allows a trustee to manage trust property for one or more beneficiaries with the underlying beneficial ownership easily changed via selling, transferring or issuing more or different types (ordinary, income only, capital only, voting only or any combination) of units.

It is commonly used as a structure for investments or businesses where there is more than one family in business together.

DISCRETIONARY TRUSTS

A discretionary trust is a trust where the trustee has discretion in how capital or income each year can be distribute to a group of beneficiaries.

This is completely the opposite to a bare trust where the beneficiary is for all intents and purposes entirely entitled to the capital and income of the trust, or a unit trust where distributions can only be made in accordance with the relevant unit percentages each beneficiary unit holder holds. The most common form of discretionary trusts are:

Family Trust: A family trust is by far the most common discretionary trust. It is set up such that the trustee holds the trust property for and on behalf of a named person or persons (often called the specified, capital or primary beneficiary in different trust deeds).

As an extension of this, a wider category of beneficiaries (often called general beneficiaries) is also included such that any relative of the named beneficiaries are by definition included as beneficiaries. In each year, the trustee may elect, through a trustee declaration, to distribute capital or income to any number of beneficiaries, whether named or simply by being a relative by definition of the named beneficiary.

An example of this illustrates the advantages of this structure:

Assume David is the trustee of a family trust of which he and his wife Sandra are the named beneficiaries and that each year the trust makes $100,000 net income. David and Sandra's son Jeremy turns 18 years of age. Jeremy goes to College and does not earn any income.

Sandra still earns $40,000 in her own name from her employment but David does not work.

As trustee David might declare for tax purposes that he and Jeremy each take $45,000 each (since Jeremy, despite not being a named beneficiary but given he is a relative of the name beneficiaries he is still entitled to participate in the trust) and Sandra will earn the remaining $10,000 of trust income in addition to her $40,000 salary

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The above is a perfect illustration of how a discretionary trust might be used to distribute income to various family members and lower the overall tax payable as a family by taking advantage of lower marginal tax rates.

Hybrid Trust: Hybrid trusts are infinite in their similarities and difference as they can be drafted to perform certain tasks, however in simple terms they are hybrid in nature as they have certain elements of a fixed trust with limited discretionary power also provided to trustees.

The tax office more recently has put restrictions on the taxation of these trusts and they are less common than they once were.

TESTAMENTARY TRUSTS

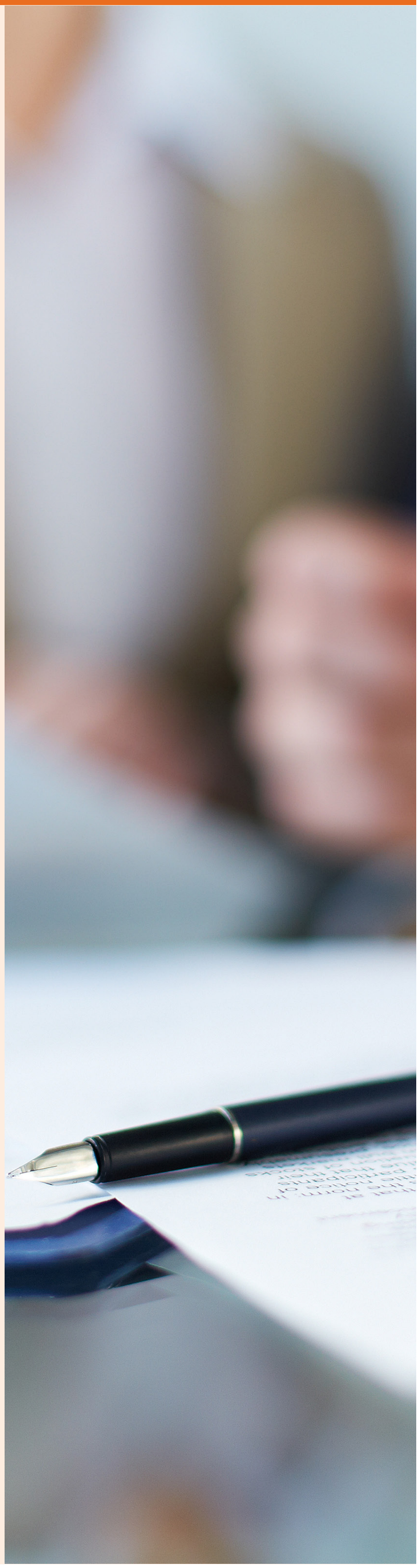
A testamentary trust is a trust created in the will of a person who becomes deceased. They can be fixed or discretionary in nature and are very useful in dealing with Estates.

SUMMARY...

Trusts are a very useful tool in structuring your business or personal affairs as they offer tax advantages, simplify succession and estate planning and provide asset protection that the trustee or beneficiaries might otherwise not have enjoyed.

Contact our friendly team at Mulcahy & Co. for a review of your business and/or personal structures to see if a trust may be of assistance to you.

We offer a free no obligation meeting to review your situation. Call us today on 03 5330 7200 and take advantage of this valuable offer.



M STEPS

Are You Financially Secure?

At Mulcahy & Co we are in a unique position to provide the expert advice and solutions of accounting, financial planning, lending, legal and information technology all under the one roof. This makes a normally complicated process seamless to help you on your way to becoming financially secure.

WHAT DOES BEING FINANCIALLY SECURE MEAN?

It means assessing your personal and business goals and developing a plan to achieve them.

1. **Goals & objectives**
2. **Estate plan**
3. **Risk plan**
4. **Asset protection plan**
5. **Taxation plan**
6. **Debt plan**
7. **Retirement plan**
8. **Business plan**
9. **Superannuation plan**
10. **Investment plan**

FOLLOW OUR 10 STEPS TO SUCCESS TO ACHIEVE FINANCIAL SECURITY...
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