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DISCRETIONARY TRUST – INFORMATION FOR CLIENTS Walsh West Private Client Legal 2021

Why might a discretionary trust be good for you?

A Discretionary Trust allows you to put some or all of your Estate into a Trust, which can then be distributed to all or any of your beneficiaries by your appointed Trustees when they feel it is appropriate.

By setting up a Discretionary Trust, you are empowering your appointed Trustees to manage your Estate and decide at their discretion, how, when and who to distribute it to.

It's just one example of a Trust that you can set up when making a Will, and it's an effective flexible way of leaving assets to grandchildren or protecting family wealth for generations to come.

How Does it Work?

In England and Wales, a Discretionary Trust can be set up by an individual or couple (called the Settlor or Settlor's) who then appoint two or more Trustees to manage the assets for a number of potential beneficiaries.

You can set up a Discretionary Trust during your lifetime, or you can write it into your Will so that in the event of your death, your wishes are actioned.

As Settlor, you can prepare a Letter of Wishes alongside your Will. This effectively serves as instructions to your appointed Trustees advising them on when, and in what circumstances your beneficiaries should receive assets.

However, a Letter of Wishes is not a legally binding document, and your Trustees are by no means legally bound to abide by its contents. They can still act at their discretion, for example, if they feel a beneficiary is not responsible enough to receive the assets.

Why are Discretionary Trusts so Useful?

The best thing about Discretionary Trusts are that they offer so much flexibility. This means you should consider creating one where:



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- You are unsure how you want your wealth to be distributed between groups of beneficiaries after you die. Leaving this decision up to people you trust can be helpful.
- You have a beneficiary who is in receipt of means-tested benefits. Leaving assets in a Discretionary Trust means such a beneficiary can benefit from the Trust, as and when the Trustees deem this appropriate, without losing their entitlement to benefits.
- You have a beneficiary who cannot manage their own financial affairs. Leaving assets to them in a Discretionary Trust rather than outright can help circumvent the need to get a Deputy appointed to manage an inheritance received.
- It can also offer protection from creditors, meaning assets cannot be taken in the event of bankruptcy or liquidation.
- It can provide a safer way to provide for a vulnerable client to protect them from exploitation.

Important things to Consider!

Despite the many benefits to Discretionary Trusts, they are complex legal documents and we would advise that you get help from a specialist Wills and Trusts Solicitor to set one up.

It's important to remember that you are putting your wealth in the hands of other people who you must trust and who will distribute your wealth in accordance with your wishes. The Trustees have the discretion to not pass on those assets to a beneficiary if they feel that is the right thing to do. This could be for a variety of reasons to include the fact that the proposed beneficiary may:

- Be an addict who would be wasteful with their inheritance, or it could do them more harm than good.
- Be in a relationship with someone who may influence or exercise control over that inheritance.

For initial advice about Estate Planning including Lasting Powers of Attorney, Wills, Trusts and Probate; call our team on 0203 488 7503, 01992 236 110 or contact us by email at welcome@walshwestcca.com or via our website www.walshwestcca.com and we will help you.