

Introducing Trusts

What is a discretionary trust or a family trust?

Have you ever wondered what a discretionary or family trust is?

Read on because you may be surprised to hear about the benefits of setting one up. There are different types of trusts that include discretionary and family trusts.

Both trusts are commonly used by doctors whose practices are based in medical rooms. So, when planning your own practice and setting up the purchase of medical rooms and equipment, it's always wise to consider the establishment of a family trust.

WHAT IS A DISCRETIONARY TRUST?

A discretionary trust is a financial framework in which a trustee holds the assets of the trust for the benefit of the beneficiaries. They're used extensively in business and/or for investing in all types of property.

They are discretionary because the amount of money beneficiaries receive under a discretionary trust is not fixed. The trustee chooses the amount from year to year.

WHAT IS A FAMILY TRUST?

A family trust is generally understood to be a discretionary trust that holds a family's assets or runs a family business. Usually, one or more family members will manage the trust assets for the benefit of their family.

The key players - how trust works?

Both discretionary and family trusts, are 'discretionary' in the sense that any disbursement of income or capital gains to beneficiaries are made at the absolute discretion of the trustee.

TRUST DEED

This is the legal document that formally creates the trust and outlines how it will work. It will usually set out the objectives of the trust, the beneficiaries, the trustee and how the payments will be distributed from the trust.

Only designated beneficiaries may benefit from the assets of a trust. These beneficiaries may include a wide range of people who are related to other nominated people. For example; a spouse, child or grandchild of a nominated person and even eligible companies, trusts and charities may become beneficiaries of a trust.

As the trustee has the discretion to choose who will benefit from the assets of the trust, it is common for the trustee to choose members of a nuclear family as beneficiaries – for example, their spouse, children or grandchildren.

Importance of a settlor

A discretionary trust is established by a person known as 'the settlor'. The settlor transfers a designated amount of money to the trustee who holds it for the life of the trust.

The settlor is an individual person who is unrelated to a trust's beneficiaries. For example, it could be your lawyer or accountant.

After the act of 'establishment', the settlor has no further role in the trust and receives no benefit from it.

Think of the role of a settlor as that of an independent umpire who hands you over money – like a coin for tossing.

Importance of a trustee

The trustee holds the property of the trust and conducts the trust activities for, and on behalf of, all beneficiaries. A trustee can be a natural person or a company, but a company trustee may yield greater financial benefits for beneficiaries.

The choice of trustee is important because the trustee makes the selection of the beneficiaries who will benefit from the trust.

The trustee may be removed and replaced by an 'appointor' (see below 'importance of an appointor'). In this sense, the appointor can be said to exercise ultimate control over the trust.

Think of the role of a trustee as that of a footy team coach.

Importance of beneficiaries

A trust deed will usually stipulate by name a group of people to be nominated as 'primary' or 'specified' beneficiaries. A normal trust deed will also include a broader class of people who are defined by blood or marriage relationships to those primary beneficiaries. In addition, companies and trusts connected to the family and charitable institutions may also be included in the range of beneficiaries.

In some instances, it may be the case that no beneficiary will have an entitlement to the assets of a discretionary trust.

It's only when a trustee makes a discretionary decision that a particular beneficiary is entitled to receive a benefit from a trust that the beneficiary has a right to that entitlement.

Think of the role of the beneficiaries as the various players in the footy team.

Importance of an appointor

The appointor has the power to 'hire' and 'fire' the trustee of a discretionary trust. In other words, the appointor controls the trust. The appointor is often the head of the family.

Think of the role of an appointor as that of a board, or the owner of a footy team.