

Hello and welcome to this short video entitled “Will Trusts”

I’ll explain why a testator might create a trust in their will, what type of trust that might be, and how do you identify the type of trust.

The video is based on our understanding as at the date you can see in the important information section on the screen.

I'm Graeme Robb, and I'm a Senior Technical Manager. I'll take you through this short video.

As we know, a trust involves formally transferring assets to trustees with instructions which are set out in a trust deed.

Insurance companies typically offer a range of lifetime trusts as a means of

- Avoiding probate.
- Gifting without losing control
- Tying assets up until a future date perhaps for children, and of course
- Tax planning

Making a gift via a trust during lifetime will mean that the trust fund will not form part of the deceased's estate on death.

So, what about that death estate? Assuming there is a will then the personal representatives act upon that and will distribute funds to the beneficiaries or perhaps pass assets to trustees where there is will trust. A testator can write a will trust into their will to take effect after they die.

In practice, there will be a gap between the date of death and when the trust starts up, called the 'period of administration'. Probably just a matter of months, but with a complex estate it could be years.

There are various reasons for writing a trust into your will. Here are 5 possibilities

1) Provide for vulnerable beneficiaries

HMRC consider that a vulnerable person is either a disabled person or a child under the age of 18 at least one of whose parents has died. The child is known as a 'bereaved minor'. If the vulnerable trust meets certain qualifying criteria then special income tax, CGT & IHT rules can apply

2) In a second marriage, an Immediate post Death Interest (known as an IPDI) might be set up to give an interest in possession to the surviving spouse or civil partner.

- So for example, consider Kirsteen who is married to Lionel and has three children from a previous relationship. In the event of her death, she is keen that both Lionel and her children are provided for. With that in mind, she might include a provision in her will stating that her estate will pass to trustees where Lionel will have a life interest (entitled to income) and on his death the capital will pass absolutely to her three children.

For tax purposes,

- The spousal exemption will apply to these funds passing on Kirsteen's death
- On Lionel's death the trust fund will be inside his IHT estate, and
- The trust is not subject to the relevant property regime.

3) Despite the availability of the transferable NRB, many married couples still choose to establish a discretionary will trust on first death.

There may be non-tax motives for the surviving spouse or civil partner not inheriting everything. For example asset protection where there are children from a previous relationship, or financial instability of the surviving spouse. In addition, outright ownership of assets by the surviving spouse might impact on means tested benefits. Also, where it is considered likely that investment growth will exceed Nil Rate Band increases, then a discretionary will trust may be preferable on first death.

4) Education funding

A grandparent might wish to set aside a sum of money in a discretionary trust to help current & future grandchildren with university costs.

5) IHT reliefs

A discretionary will trust offers a means of crystallising business or agricultural property relief before it is lost either through a post death sale or change in legislation. For example, Robert dies and leaves shares qualifying for Business Property Relief to his spouse Susan. This inter-spouse transfer is exempt from IHT. If Susan duly sells those shares then she now owns cash and the Business Property Relief has not been crystallised. Alternatively, Robert could have left his shares to a discretionary will trust and crystallised the Business Property Relief on his death. If the trustees then sold those

shares, the proceeds would sit inside the discretionary will trust. The relevant property regime would apply but the proceeds would not be subject to IHT on Susan's death.

Clearly therefore if you are advising on a potential trustee investment for a will trust, then the type of trust encountered will vary. It's important to recognise that because Trust legislation requires trustees to ensure the investment is suitable given the particular circumstances of the trust, and tax implications are a factor here.

So we know that it's important to identify the type of trust that's been created as trusts are taxed differently. But more than that, the entitlement of the beneficiaries to the trust funds will vary.

Typically the will trust falls into one of three categories...

A Bare Trust where the beneficiary is entitled to everything.

An Interest in Possession Trust where a beneficiary is entitled to income. And

A discretionary trust where no potential beneficiary is entitled to anything.

I leave the residue of my estate on trust for the absolute benefit of my grandchildren alive at the date of my death.

This creates a bare trust which is one in which each beneficiary has an immediate and absolute title to both capital and income. The test according to HMRC is whether the trust funds have 'indefeasibly vested' in the beneficiaries. If they have then the trust will be a 'bare trust'.

All of the grandchildren who were alive when the grandparent died are entitled to an equal share in the residue of the estate. There are no other conditions that they must fulfil before they become entitled. The beneficiaries have a vested interest and the trust is a bare trust.

I leave funds on trust to pay the income to my wife Alison for life, thereafter to my children Brian, Carol, David, Emma and Fred, in equal shares absolutely..."

Alison has an Interest in Possession.

Broadly speaking, a person has an interest in possession in property if he or she has the immediate right to receive any income arising from it, or to the use or enjoyment of the property. If the trustees have a discretion or power to withhold the income from the income beneficiary, which can be exercised after income arises, then there cannot be an Interest in Possession.

I leave funds for such of my children as the trustees shall in their discretion appoint by deed or deeds..." This is a discretionary trust.

A discretionary trust is one where the trustees can accumulate income or pay it at their discretion. Normally the trustees can choose from classes of beneficiaries to whom they can distribute the trust funds.

The beneficiaries do not have any entitlement to the trust fund and it does not form part of their estate on divorce, bankruptcy or death while the funds remain inside the trust.

Due to this flexibility the trustees of the will are potentially subject to a ten yearly charge and an exit charge.

That's us at the end of this short video and I hope its been of use.

If you wish to discuss matters further then please contact your Prudential Account Manager. You can also access our Knowledge Library within Pru Adviser for further information. In particular, these articles may be useful.

Thanks very much for your time.