USING TRUSTS FOR ASSET PROTECTION & DIVORCE

What is a trust?

A trust can be set up in your lifetime or on your death as a way of managing assets.

Trusts are set up for several reasons – for example

- the protection of family assets;
- to look after assets when someone is too young or lacks the capacity to manage their affairs; and
- to pass on assets when you're alive or when you die.

How to ensure your assets are protected

When you have children or grandchildren who are married, you may be concerned about what happens if they divorce. This may particularly be the case if you are thinking about writing your Will and have concerns that if your family inherit and then separate or divorce, a portion of your assets may end up in the hands of their ex-spouses.

How can I use trusts to protect my assets in the event of a divorce in the family?

While the Court will always have wide powers to look at assets, including trusts, trusts that have been set up before the marriage or that form part of an estate may be disregarded. In England and Wales everyone has the right to leave their estate as they wish under their Will and can also set up trusts in their lifetime. The background to a trust is key when it comes to divorce proceedings. Long-standing family trusts for the benefit of future generations will often be considered to not form part of 'marital' assets or 'matrimonial property'. As a rule of thumb, such trust assets will only be attacked by the divorce courts when the needs of the divorcing parties cannot be met out of the "marital" assets built up during course of the marriage. A common type of trust for those who are concerned about divorce is a 'discretionary trust'. Such trusts give full discretion to the trustees of the trust on how to distribute the trust assets and who from a list of beneficiaries should benefit.

How do my trustees know what to do?

Writing a letter of wishes to support your Will or trust can be extremely useful. While it is not legally binding, it is a good way to give your trustees a 'steer' on how you would like your assets managed and distributed.

What are the tax consequences?

Trust income is taxed at a special trust rate but if income is distributed to a beneficiary who pays tax at a lower rate than the trust rate then they should be able to reclaim the difference from HM Revenue & Customs. Trust capital gains are also taxed at a special trust rate and there may be some inheritance tax consequences. As the taxation of trusts can quite different from that on individual, if you are thinking about setting up a trust this is an area to take advice on.

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How can GL Law help you?
We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

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