

The
Will Guys



Trustees of Discretionary Trusts

What is a Discretionary Trust?

A discretionary trust is a legal arrangement used to control and manage assets for the benefit of the beneficiaries. Assets, such as land, buildings or money, are known as “trust property”. The trust is managed by appointed trustees; these are the people who look after the trust for the beneficiaries. The trustees are responsible for the trust’s assets and are obliged to honour the wishes of the person whose assets were placed into trust. The person whose assets were placed into trust is known as the “settlor”. When a discretionary trust is created the settlor gives the trustees the “discretion”, as to how to distribute the money or assets in the trust.

The duties of Trustees of Discretionary Trusts

The main objective of trustees is to follow and carry out the terms of the trust and allocate the funds amongst the beneficiaries.



What powers do the Trustees of a Discretionary Trust have?

A trust is usually created by a will. The powers of the trustees will depend upon what powers were decided under the will. Often the person who instructed the trust to be set up will also leave a “letter of wishes” or “memorandum of wishes” setting out how they would like the trustees to exercise their powers. Unlike a will this is not legally binding; this supporting document provides guidance for people dealing with your assets. As an example: there may be an age set that they would wish the beneficiaries to be able to inherit or directions as to a right to occupy a property for someone.

When are Discretionary Trusts used?

A discretionary trust offers a great deal of flexibility; they can offer protection from marriage after death and even care home fees if used in the right way. The trustees have the option to adapt distributions according to the needs of the beneficiaries. They can be used where a beneficiary is vulnerable or is not capable of looking after their own financial affairs. The flexibility of a discretionary trust may allow the trustees to provide financial support to a beneficiary at a crucial time of their life - such as to fund their education. Discretionary trusts can also be used as a means of mitigating, as far as is possible, an estate's liability to Inheritance Tax. In many cases the beneficiaries will not have to pay this tax.

Who should be appointed as the Trustees under a Discretionary Trust?

This is one of the most important decisions. Since the trustees under a discretionary trust have a broad range of powers, it is important to give careful consideration as to who should be appointed. The trustees should be people who the settlor believes will act in the best interests of the beneficiaries and importantly get along with each other so that decisions can be made together. If an estate is of high value or is complex it may be sensible to assign an independent professional trustee.

How can The Will Guys help you?

It can be challenging to decide if a trust is the best solution for you, or equally, which trust would be most suitable given your requirements. Our specialist Will writers can help you set up a Discretionary Trust within your Will and are more than happy to discuss your options. We can advise on legal implications you may be unsure about, make alterations where necessary and provide advice. So, if you're considering your future and what happens to your assets after your death, we want to make the process of making a Will and setting up a Trust as easy as possible.



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