

Ravenswood Trustees Limited

**Introduction and Trust Notes**

# Your child could forfeit means tested benefits if you do not consider the following:

**Make a will.** If you do not, those who you hope will benefit may not do so under current legislation. It does not follow that a spouse will necessarily automatically inherit an estate. In some cases, where there is no Will, assets may go to the State if there are no relatives.

**Decide who will benefit.** It is never too early to make these decisions. Your Will can always be changed during your lifetime if circumstances change.

**Inheritance Tax.** As personal assets increase, so more and more people are considering lifetime inheritance tax planning. One way to mitigate some or all tax is to make regular payments to a trust, utilising the annual gift exemptions available. You may wish to take financial advice from your accountant.

**Benefiting someone with a disability.** If you intend to leave assets to someone who cannot handle their own affairs, it is vital to leave such assets in trust. Leaving assets direct can cause many problems. The beneficiary could lose statutory benefits, and their assets would have to be handled by a Deputy appointed by The Office of The Public Guardian, a process which can be cumbersome and complicated.

**Set up a trust.** A trust can be created at any time. There is no need initially to put more than a token sum into the trust to set it up and assets can be left to the trust under the terms of your Will. As part of inheritance tax planning, assets may also be transferred to the trust during your lifetime.

**I don't know how to set up a trust!** You should consider instructing Ravenswood Trustees Limited to prepare a trust and to act as one of the trustees. A family member or other suitable person can be appointed as a co-trustee.

**Surely, setting up a trust is very expensive!** Surely, setting up a trust is very expensive! You will find this is not necessarily the case. Ravenswood Trustees Ltd can provide a full package to incorporate a new Trust and new Wills for a nominal fee.

**What are the running costs of a trust?** The annual administration fees charged by Ravenswood Trustees Ltd are very competitive. Ravenswood Trustees Limited is a not-for-profit organisation and passes preferential rates savings on to the trusts managed. Please ask for a copy of our Standard Terms and Conditions for full details.

# Introduction

Ravenswood Trustees Limited (RTL) was established in December 1994 in response to a very great need by families to offer a continuing service of financial support to those with learning and other disabilities when parents and grandparents have passed on. Rules covering benefits and local authority funding are very complex and quite confusing. Other family members or friends may not be willing or have the experience to manage a child's financial affairs after the parents have passed on.

A solution to the problem would be to appoint a corporate trustee (Ravenswood Trustees Limited) to manage your dependents' financial affairs, possibly together with a second trustee chosen by the family.

The directors of RTL include skilled professionals in fields of law, accountancy and stock broking, together with parent representatives. None of the directors receives any remuneration for their work which is undertaken on a voluntary basis.

# Trust Notes

Families of people with a learning disability will naturally be concerned to provide financial security as far as is possible for those who are unable to handle their own affairs, and especially after parents are deceased.

It is most important to make a Will. If there is a no Will, it does not follow that a spouse or in fact any other relative of the deceased's choice will automatically inherit all the estate. Depending on its value, only part of the estate could go to a spouse, with the balance passing to children or other relatives. In such cases, if a person who has learning disability inherits assets, it will be necessary to apply for a Deputy to be appointed by the Office of the Public Guardian to administer the inheritance. In addition, the inheritance could jeopardise means-tested statutory benefits and local authority funding. A person with a learning disability might not be able to make a Will without a direction from the Court and this will certainly complicate the matter. It is very important to update your Will.

Assets intended for someone with a learning disability should be left to that person in trust. Although it is very important to make a Will, it is not necessary that a trust should be created through a Will, as it is quite possible and even preferable that the trust is set up during the lifetime of parents, even though initially there may be little capital. The Will can set out exactly how much should be placed into trust from the parents' estates.

At the present time, one positive advantage of placing assets into a discretionary trust is that the capital and any accumulated income will not be taken into consideration when calculating means tested benefits. Statutory Authorities will take into account capital or income only when it is passed on to the individual.

Assets in trust will be the responsibility of trustees who will administer the affairs of the trust on behalf of the beneficiary, and as trustees, they will be requested to follow any instructions given by the settlor (the person who creates the trust) in his or her lifetime.

Handing over money to someone to “look after my child” or even giving it to a sibling is not to be recommended, as it could lead to problems. Setting up a trust is really the only sensible answer.

There are different types of trusts depending on the needs of the beneficiary. It is very important to choose trustees carefully. They must take a long term real interest in the beneficiary and if that person is unable to handle their affairs or make decisions, then the trustees will also need to take a very personal and practical interest in the individual.

Families may also face difficulty in selecting trustees who are able to give a long term commitment to the beneficiary. Families should therefore consider using the services of RTL because the start-up costs of creating a discretionary trust to support those with a disability are modest. RTL has been specifically set up for the purpose of administering such trusts. Under our scheme the minimum amount that can be placed in a trust is £100 and there is a nominal set-up fee.

# Trust Explained

## What is a trust?

In simple terms a trust (also called a settlement) is created when A (the settlor) gives assets to X (the trustee) so that X can manage these on behalf of B (the beneficiary): B has what is called a “beneficial” or “equitable” interest in the settled property (i.e. the right to enjoy the benefits from it).

## Why create a trust?

There are a number of reasons why trusts are commonly created:

1. A trust enables the settlor to make a gift to someone who, for one reason or another, is personally unable to manage their assets: this, of course, is often the reason for setting up a trust in favour of someone who has a learning disability;
2. A discretionary trust will minimise any loss of social security benefits which would result if the beneficiary owned the settled property outright;
3. A trust can sometimes be used to reduce tax, particularly Inheritance Tax;
4. A trust can be used to provide benefits for a number of different people. For instance, settlors may direct their trustees to pay the income from the settled property to one of their children during that child’s lifetime, and to pay the capital to their other children after the first child’s death;
5. A trust could ensure that a fund is available to meet any shortfall in funding and to provide “top-up” to enable the beneficiary to choose where he or she wishes to live;
6. A trust can provide for extras when a person is in funded residential accommodation.

## **Why should I appoint Ravenswood Trustees Limited as my trustees?**

RTL is an independent not-for-profit company, limited by guarantee and was set up in 1994. The Company Directors are very experienced in understanding the problems and needs of people with learning disabilities and hold regular meetings where each trust is reviewed. By appointing a Corporate Trustee, rather than an individual, there is a much greater degree of continuity.

## **Are trustees required actually to care for a beneficiary?**

No, there is no requirement for trustees to be carers or for carers to be trustees. One person may in fact fill both roles, but the duty of a trustee as such is limited to managing the trust assets in accordance with the terms of the trust deed – looking after the money rather than looking after the beneficiary personally.

## **What is a discretionary trust?**

Under the terms of the trust deed the settlor gives the trustees power to decide how the income is to be divided up amongst a number of beneficiaries. The settlor may also give the trustees the option of retaining and reinvesting income. The trustees also have power to distribute, resettle or retain the settled capital.

## **How is a discretionary trust created?**

A discretionary trust can be created either by the settlor's Will or by the settlor signing a document called a settlement or trust deed or declaration of trust. One difficulty in creating a discretionary trust by Will is that a well-drafted trust will normally be rather long, since it may last for many years and therefore has to cover contingencies, and to put all this in a Will would make the Will itself excessively long.

Therefore, there is much to be said for setting up the trust while the settlor is still alive when considering questions such as Inheritance Tax or to receive the proceeds of an insurance policy.

It is for these reasons that the RTL form of settlement is worded so that, if the settlor wishes, the trust can be set up with a nominal sum of money and more substantial funds added later, either by a gift in the settlor's lifetime or by the settlor's Will. Funds may be added during the lifetime of the settlor as part of IHT planning.

### **Can one have a discretionary trust for just one person?**

No; even if the settlor's real object is to help one particular person ("the principal beneficiary"), it must at least be theoretically possible for more than one person to become entitled to the settled property, either simultaneously with the principal beneficiary or after his or her death. If this is not the case and the principal beneficiary is the only person who could ever have an interest under the trust, the assets are considered to belong to that beneficiary even though those assets are held by a trustee. This has consequences which may involve HMRC, the Department of Social Security and the Local Authority. Questions of tax, social security benefits and Local Authority funding are very complex and further advice should be sought in individual cases.

In the form of settlement provided by RTL the capital will pass to those persons identified by the settlor upon the death of the principal beneficiary. It is therefore very important that the settlor during his or her lifetime makes known to the trustees any wishes regarding the distribution of the trust on the death of the principal beneficiary. These instructions would normally be included in a Memorandum of Wishes.

### **Wow many trustees can there be?**

There is no maximum number of trustees legally permitted in a "private" trust but only a maximum of four trustees can be registered as the owners of property. However, to have four trustees may make a trust unwieldy and expensive to run, since all trustees have to be consulted and their decisions have to be unanimous; equally, of course, documents requiring signature have to be circulated to all. If RTL is to be appointed, the simplest arrangement is for it to be sole trustee, but the settlor may prefer to have another individual to act jointly with RTL. Owing to the additional work and expense

involved, RTL is not normally willing to accept an appointment jointly with more than one other trustee.

In choosing an additional trustee, it is obviously helpful to have someone who knows the principal beneficiary well and is of a similar age – possibly a caring brother or sister, say, if such is available. Needless to say, any proposed trustee should be consulted in advance and is likely to want to have full information about the trust before taking on the responsibility.

### **What property can be included in a trust?**

All types of property can be held in a trust, but the settled property (which is also sometimes called “the trust fund”) will normally be cash and investments to produce either income or an increase in capital (e.g. stocks and shares, building society deposits, National Savings, insurance policies and bonds, properties let for rent, etc.) or assets for the beneficiary actually to use like furniture or a house or flat to live in. However, the question of whether it is practical for the trustees to retain a particular asset for the beneficiary to use will depend on circumstances from time to time, and it is essential for the trustees to have the power, if they think it desirable, to dispose of any asset and to use the proceeds for the purpose of the trust – possibly in purchasing some other similar asset or by investing the proceeds to produce income or an increase in capital.

### **Will the size of a discretionary trust affect State benefits and Local Authority Funding?**

At the present time, there is no limit upon the size of the funds held for a person under a discretionary trust. Only the income or capital actually received by the beneficiary will affect an entitlement to Social Security benefits or render the beneficiary liable to contribute towards the cost of care.

# Glossary

<b>Beneficiary</b>	a person or organisation benefiting from a Trust or Will
<b>Capital</b>	assets held in a Trust
<b>Deed</b>	document setting out the terms of the Trust
<b>Estate</b>	total value of all assets
<b>Settlor</b>	person creating a Trust
<b>Trust</b>	(also called a settlement) – Property held by Trustees for the benefit of named beneficiaries
<b>Trustee</b>	a company or person appointed to look after a Trust
<b>Will</b>	document disposing of your assets

## How to Contact us

If you decide to take advantage of the services offered by Ravenswood Trustees Limited you should contact:

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