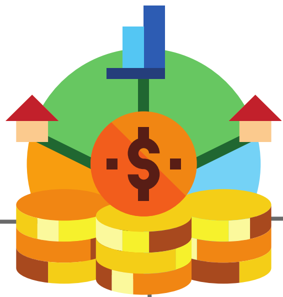
WHAT IS A TRUST?

A Trust is an entity created to hold assets for the benefit of certain persons or entities, with a trustee managing the Trust (the legal owner). Most Trusts are founded by the person (settlor) who executes a written deed of Trust which establishes the Trust and sets out the terms and conditions upon which it will be administered.



TRUSTEE

- the legal owner of all trust assets
- the administrator of the Trust

APPOINTOR

the person with the power to appoint and remove the Trustee

BENEFICIARY

- the beneficial owners of the assets in the fund
- can be one or more beneficiaries and their entitlements can vary.

Types of Trusts

There are generally three ways in which a Trust can be created. Those created during the settlor's life time (inter vivos Trusts), those created by Will, which is on the death of the testator (Testamentary Trusts) and then those created at law.

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Below is a table outlining some of the more common Trusts created during one's life time and upon death.

INTER VIVOS TRUSTS	TESTAMENTARY TRUSTS
Family Discretionary Trust	Minor's Trust
Unit Trust	Life Interest
Hybrid Trust (combination of a Unit and Discretionary Trust)	Right to Reside
Bare Trust	Discretionary Trust
Fixed Trust	Protective Trust
Special Disability Trust	Special Disability Trust
Education Trust	Education Trust

Advantages and Disadvantages of a Trust

Historically Trusts were used as a tax minimisation vehicle but over the years the Australian Government has removed many of the tax advantages afforded to the Trust structure. Today the main reasons an inter vivos Trust is created is for the purposes of investment, operating a business or for asset protection.

As outlined above there are numerous types of Trusts and each Trust is distinct in character, therefore, having its own advantages and disadvantages.

Generally speaking, all Trusts can be placed into two categories; fixed or discretionary.

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A fixed Trust simply means that the interest of beneficiaries of the Trust is defined, that is their entitlement to income and/or capital is fixed in percentage terms. For example in a bare Trust where there is one beneficiary and that beneficiary is entitled to 100% of the income and capital of the Trust.

A Discretionary Trust on the other hand means the Trustee of the Trust decides who of the many potential beneficiaries will be entitled to the income and capital in any given year. Therefore no one beneficiary has an absolute entitlement to the income and/or capital of the Trust.

In addition to Trusts which are fixed or discretionary, there are also Trusts which are a hybrid of the two. For example, the Trust terms may include fixed entitlements to capital but the Trustee has the discretion to pay the income to one or more of the beneficiaries or to accumulate (ie keep the income in the Trust rather than pay it to a beneficiary).

Main Advantages

FIXED TRUST	DISCRETIONARY TRUST
Beneficiaries have a guaranteed entitlement to income and capital.	Income can be split between the potential beneficiaries which is often used as a tax minimisation strategy.
Unit Trusts can be used to operate a business allowing partners to own different proportions in the business according to their allotment of units.	Income can be streamed between the beneficiaries. For example dividends can be paid to one beneficiary while rental income can be paid to another.
	Asset Protection
	Flexibility

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Main Disadvantages

FIXED TRUST	DISCRETIONARY TRUST
Although unit holders are protected the value in their units is available to their creditors.	No absolute entitlement to income or capital.
Unlike a company a Trust must vest (end) after a maximum 80 years	Trust must vest (end) after a maximum 80 years
Lack of flexibility	Asset protection is marginalised in relation to matrimonial property disputes
Losses trapped in Trust	Losses trapped in Trust

To determine which Trust structure suits your needs and circumstances, please contact your solicitor to discuss your personal situation and requirements.

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