

# The Basics of Trusts

## What is a trust

In general, a trust is a legal relationship that is created when an individual (known as the “settlor” or “donor”) transfers the legal ownership of certain property to another individual or company (known as the “trustee”). The trustee is responsible for managing and administering the property in the best interests of trust's beneficiaries, which may include the settlor. The beneficiaries of a trust are the beneficial owners of the property subject to the trust.

In order for an express trust to be valid, three certainties must exist in the trust instrument. The three certainties are:

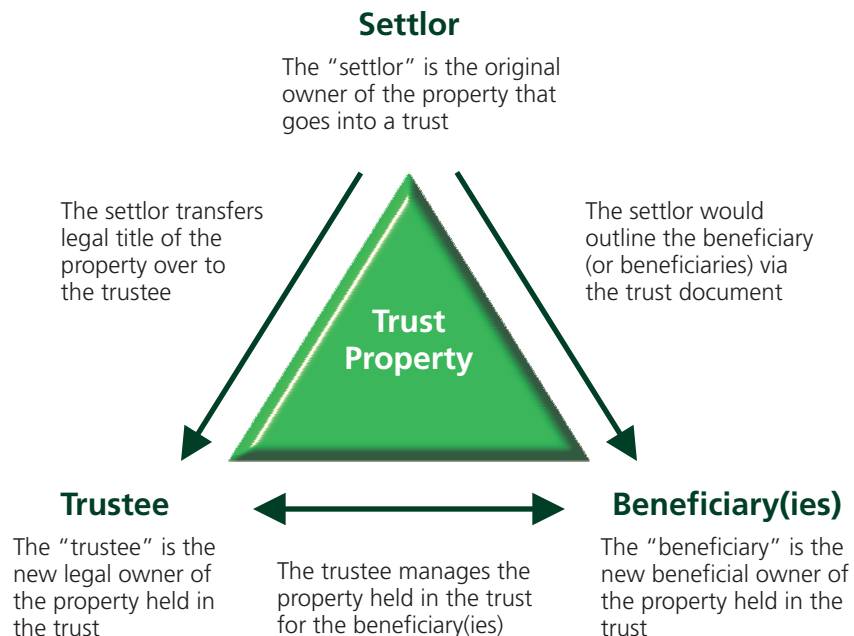
- 01 **Certainty of Intention:** There must be a clear intention by the donor to create a trust.
- 02 **Certainty of Subject Matter/Property:** The property subject to the trust must be clearly identified.
- 03 **Certainty of Objects/Beneficiaries:** The beneficiaries of the trust must be clearly identified, or at least be ascertainable.

## What trusts may achieve

- Provide the orderly transfer of property
- Protect assets from potential creditor claims
- Manage your estate tax exposure including possible reduction in probate costs
- Secure the cost of providing for an elderly relative, parent or disabled child
- Help finance a child's education
- Provide a structured way to administer your personal and financial affairs should you become incapacitated
- Make a tax-advantaged charitable gift
- Manage assets for the benefit of your heirs and other beneficiaries
- Save a business from an untimely liquidation or disadvantageous sale

## What property can go into a trust?

- Stocks and bonds
- Mutual funds
- Real estate
- Life Insurance
- Variable annuities
- Capital management accounts
- Art
- Collectibles
- Personal possessions; and more



Trust Type	Description
<b>Inter vivos</b>	An <b>inter vivos</b> or “ <b>living</b> ” <b>trust</b> is put in place during your lifetime. The assets are transferred to a trustee to carry out the terms of the trust and to professionally manage the trust. An inter vivos trust can often become the foundation of an estate plan.
<b>Testamentary</b>	A <b>testamentary trust</b> is set up under the provisions of a Will and can consolidate your estate plan for your heirs. Upon your death, the assets are retained in trust and administered according to the instructions given in your Will.

## Other Considerations:

### Taxation of trusts:

Inter Vivos Trusts are taxed as if they were a separate legal person at the top marginal tax rate.

Testamentary trusts, or those created under a Will, are generally taxed at graduated tax rates; however assets that flow through an estate into a testamentary trust may first be subject to potential probate fees where applicable.

### 21 year deemed disposition rule:

In general, trusts are deemed to dispose of certain properties at fair market value 21 years after the day the trust was created (and every 21 years thereafter), and are deemed to reacquire such properties at that same fair market value. This may lead to a tax liability assuming the property has increased in value. Losses may also result if the value of trust property has declined.

### Residence of a trust:

In general, a trust is resident where its management and control is located. For example, where the majority of trustees reside in Canada, a trust may be considered a resident in Canada. However, if a non-resident trustee is doing most of the management, the trust may be considered non-resident.

### Choosing a trustee:

Points to consider include, but are not limited to:

- a) the duration of the trust
- b) relationship of the trustee to the beneficiary
- c) trustee fees
- d) ability and experience of the trustee to manage the assets
- e) residence of the trustee(s)
- f) liabilities of the trustee

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