

# Trust as a Tool of Inheritance Planning

## Trust

In this edition of our Inheritance Planning series, we will shed light on Trust as tool that can be used to prevent the shirtsleeve-to-shirtsleeve phenomenon. When people hear the word Trust their mind goes to the very wealthy and people derisively known as Trust Fund 'babies'. This actually is a misconception because with a Trust as a tool to pass on your asset or wealth, you would have created a seamless and efficient plan for your loved ones and it is not only for the wealthy.

## Let's Define Trust

A Trust is often a tripartite arrangement where the asset owner agrees to transfer assets to the Trustee to hold assets for a third party called Beneficiary. The asset owner is called Settlor.

A Trust is a legal fiduciary arrangement because the settlor creates the Trust by transferring assets to the Trustee. The Settlor gives the Trustee power to hold and manage the Trust assets. The role of a Trustee is to ensure the Trust assets are available for use by the beneficiaries when the Trust assets are required. Note that a Trust arrangement is one of the effective ways to pass on wealth and it can be used for all sizes of estates – small, medium and/or large estates (this means wealthy or not, you can still use a Trust as a tool to transfer assets/wealth). However, you need an expert's guidance in selecting a suitable inheritance planning tool that meets your objectives and wishes.

## The benefits of a Trust include:

- a) Privacy
- b) Protection of Assets
- c) Avoids Probate
- d) Efficient management and consolidation
- e) Succession Planning



## Why Use A Trust

A Trust is one of the tools of inheritance planning that is used to ensure the wishes of the Settlor is carried out as stated in the Trust Deed. It is tool a that can be set up and managed in the lifetime of the Settlor who can make adjustments to it as may be necessary.

Trust is a veritable tool to create financial plans for one's loved ones especially minors and children with special needs.

A Trust can be broadly classified into two types – Living Trust and Testamentary Trust.

## Living Trust

A Living Trust is created during the lifetime of the asset owner. It appoints the Trustee who will manage the Trust assets for the named beneficiaries in the Trust Deed. A Living Trust can either be revocable or irrevocable.

A Living Trust is active in the lifetime of the Settlor unlike a Will that kicks in when the asset owner/writer of the Will has passed. It is noteworthy to mention that a Living Trust arrangement covers the three (3) significant aspects of the Settlor/asset owner's life a) during the lifetime of the Settlor when he/she is alive, b) when the Settlor becomes incapacitated and c) when the Settlor dies. Having a Living Trust guarantees immediate access to assets by the beneficiaries.



## Testamentary Trust

Testamentary Trust is a type of Trust that is created within a Will and it comes into effect when the writer of the Will passes and the Will is read. Some people refer to a Testamentary Trust as a "Will Trust". The implication of this is that the Will passes through probate and access to the assets is not gained immediately the asset owner passes. A testamentary Trust does not give the same level of privacy like a Living Trust where the documentation is restricted between the Settlor and the Trustee. When the Will is read, the content of the testamentary trust is also read out to everyone present at the Will reading.

A Testamentary Trust allows the Settlor to name a Guardian for the minor who are beneficiaries in the estate amongst other benefits in having a Testamentary Trust. This tool of inheritance planning will be recommended where the estate planning expert has considered all the factors with regards to your needs and finds it suitable to meet your desires.

## Revocable Trust

A revocable Living Trust arrangement is created in the lifetime of the Settlor. It can be amended, altered or revoked during the lifetime of the Settlor. This type of Trust arrangement is flexible because it can be amended, changed and/or terminated during the lifetime of the Settlor.

## Irrevocable Trust

An irrevocable Living Trust is a Trust arrangement that cannot be changed, amended or terminated during the lifetime of the Settlor except by the order of the court or the consent of the Settlor and all the beneficiaries.

## Joint Trust

Joint Trust arrangement is a Trust set up by two people in their lifetime for example a couple (husband and wife). They can change the instructions as they wish and upon the passing of either spouse, the right of survivorship sets in.



## Trust Deed

The legal document that governs a Trust arrangement is called a Trust Deed. This document spells out the terms and conditions of the Trust and the responsibilities of the parties.

## Features Of A Trust

- A Trust is a private and confidential arrangement.
- A Trust is an efficient tool of minimising taxes on one's Estate.
- A Trust can be a Living Trust or Testamentary trust.
- A Living Trust is flexible and can be adjusted easily in the lifetime of the Settlor.
- It can be revocable or Irrevocable.

## What Type Of Asset Can Constitute A Trust Asset?

All classes of assets can constitute a Trust asset from real estate, artworks, shares, cash, vehicles, jewellery, and other types of assets. The Trust can be named as beneficiary of a Life insurance policy.

## Naming Your Trust:

Note that you can give your Trust a name as you so desire. You can also use a pseudo name to protect your identity while some would rather a Family name to ensure continuity of the family name and legacy.

## Funding Of A Trust:

A Trust is a vehicle used to hold and protect assets, so when assets are not moved to the Trust, you have not actually created a Trust. Note that for an asset to effectively belong to the Trust it must bear the name of the Trust hence the need to undertake a name change at the Lands Registry for land titles that have earlier been perfected in favour of the individual.

The process of moving assets into the Trust in some cases involves renaming of the asset to reflect the name of the Trust this means registration or re-titling. The implication of not reregistering is that the property does not form part of the Trust asset and when not captured in any other testamentary document, it falls into intestacy

## Can A Trustee Be Removed?

Yes, a Trustee can be removed where the Trustee has been found to be fraudulent, incompetent and unable to carry out the directives as stipulated in the Trust Deed. A Trustee has a fiduciary duty to ensure all responsibilities under the Trust arrangement are carried out professionally, impartially, effectively and with utmost integrity.

## Is A Trust Really A Good Tool Of Inheritance Planning?

A Trust is one of the tools that can be used to transfer assets/wealth to the next generation. One important benefit of a Trust is privacy and ability to tweak the structure in your lifetime (under a living Trust arrangement) this is an opportunity that is not available with a Will because this comes into effect when the writer of the Will has passed. Ensuring your loved ones do not go through hassles to access the assets you worked for and guaranteeing their lifestyle does not depreciate due to a loss or incapacitation in the family is a key consideration to adopt this.

Securing their lives by ensuring the assets are not depleted before they enjoy them and being convinced that everything is well taken care of either in your lifetime or when you are no longer in the picture.

A Trust is also a good tool to prevent spendthrift habits of some beneficiaries, this clause will regulate access to the Trust assets. You will ensure a spendthrift clause is in the Trust Deed to prevent a beneficiary from squandering their inheritance. This clause protects the beneficiaries in this category from themselves.

We recommend that you speak with experts to guide you in ensuring preservation of your legacies and protecting your loved ones.



## Can I Have Separate Trust Arrangements for Different Beneficiaries?

Yes, you can have separate Trust arrangements for your beneficiaries however you must have adequate resources to fund it. The reason separate Trust arrangements might be recommended for some people with beneficiaries who are at different stages of life is to ensure fairness amongst the beneficiaries.

However, the decision to create a single Trust arrangement where the beneficiaries take interests in percentages or where a settlor creates multiple Trust arrangements will be made by the Settlor.

## The Purpose of a Trust

The purpose of a Trust can cover areas like education, lifestyle, healthcare, welfare, medical, charitable giving and other areas that will be beneficial to the well-being of the named beneficiaries.

## ANSWERS TO FREQUENTLY ASKED QUESTIONS

### 1. What is Wealth Transfer?

**Answer:** Simply put, wealth transfer involves the legal and orderly transference of assets and property acquired by a person in one generation to his heirs, especially those in the next generation. Wealth transfer usually involves the transference of assets and property to a spouse, children, relatives or dependants of the transferor (the person transferring assets or property) or a charitable organisation.

### 2. Do I Need A Lawyer To Draft My Will?

**Answer:** Yes, you do. Though, no one knows better than you or can articulate like you can what you want to happen to your assets and property that you have acquired with your time, sweat, blood and tears quite like you.

Based on that, you're probably the best person to articulate how you wish your family and assets should be managed upon the occurrence of the inevitable. The reason you need a lawyer is because there are certain aspects of the law regarding what makes a will valid or what you can dispose of in your will that you might not be aware of and a lawyer is aware of. There is no point drafting a will that is not valid or can be overturned in court due to a technicality you were not aware of.

### 3. Do I Need To Use A Lawyer To Draft My Will?

**Answer:** This question is related to the one above. The answer to this question is Yes. While you might be able to draft your will yourself, you need a lawyer who understands the technicalities surrounding the legal requirements of a valid Will like execution (signatures), who can be a witness, who can act as an executor/trustee etc. The reason behind drafting a Will is that one hopes that it conforms with the law and that one's intentions as stated in the Will are going to be carried out. There is no point in drafting a Will that it legally unenforceable or even void.

### 4. What Is A Trust?

**Answer:** A Trust is a plan or framework that sets out how the assets and property acquired by a person are to be utilised either while the person is alive or after they are dead for the benefit of someone or something else who is termed a beneficiary of that trust. In law, once created, a Trust has a separate and distinct personality such that assets and property placed in a trust are deemed to no longer belong to the the person who created the trust or placed the assets in the Trust. The assets and property are deemed to be legally owned and managed by a person or company known as a Trustee. However, the Trustee is deemed to hold the assets and property in trust simply for the benefit of the beneficiary. A Trust can be created for any purpose. Some examples of why a Trust is created are to provide an allowance for a person or income for an association or even provide education for the beneficiaries.

A Trust must be differentiated from a Trust Deed which is the document that sets out the details of the trust.



As previously stated, a Trust can be set up during the lifetime of its creator or can be set up by a directive in a Will whereby it is said to be a Testamentary trust. A Trust can also be revocable or irrevocable depending on the terms of the Trust.

### 5. Who Can Be My Trustees?

**Answer:** The general answer to this is: any adult that is financially savvy and responsible, as long as you can trust them. This could be individuals who are family members or friends. However, a lawyer could also act as a Trustee in order to administer a Trust. However, if you don't want a person to act as Trustee, there are firms and companies who can act as Trustees, depending on the kind of Trust being created.

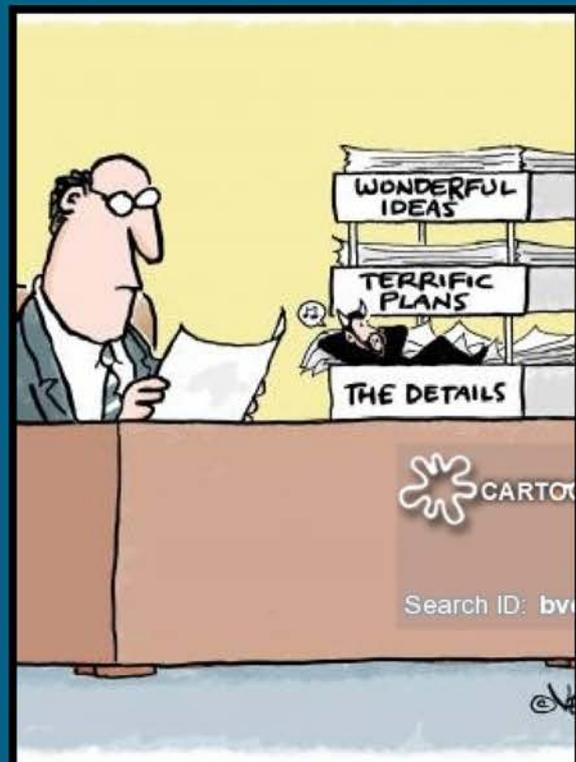
## 6. Can The Executors Of My Will Be My Trustees?

**Answer:** Yes. However, the roles of Executors and Trustees are separate and distinct and do not necessarily overlap, especially when one is creating a testamentary Trust. However, if the Executors of the Will are trustworthy, there is nothing that precludes them from being Trustees of a Trust created by the Will or created prior to the writing of the will.

However, where the Executors of the Will (who are also known as administrators) are also beneficiaries under the Trust, (for example in the case of children of the deceased), it may create an ethical dilemma in the sense that if the Executors are beneficiaries under the Will, they may seek to run the affairs of the Trust in a way that might be detrimental to other beneficiaries or two or more may seek to run the Trust in a way or manner that is detrimental to another beneficiary. In that instance, it may be better that separate people/institution fill the different roles.

## 7. Can I Invest My Estate Properties Before I Die?

**Answer:** Yes, you can invest your estate properties like cash and real assets like houses, land and others before you die. The best way to do this is by creating a Trust where the cash and assets are placed in a Trust that has a personality separate and distinct from you. You could choose to convert the tangible assets like land to cash and put the proceeds in the Trust. You could also leave them the way they are with the rent proceeds going into the Trust account. You could set up the Trust such that it pays you an allowance periodically and caters to other needs of your beneficiaries too. It could also be set up to fund the education, healthcare and lifestyle needs of your heirs.



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## 8. Can I Give My Beneficiaries My Properties While I Am Alive?

**Answer:** Yes. In the event that you do not want your Executors (or administrators) to pay probate in respect of the property you leave behind and bequeath in your Will, you may choose to give your heirs the properties while you are alive. However, in order for the transfer to be legal, it must be evidenced by a document known as a Deed of Gift.

## 9. Can I Give Part of My Estate To Charity?

**Answer:** Yes, you can. While alive, you can deal with any asset or property that is legally yours in any way you deem fit. You can therefore choose to give any part or even the whole of your property to any person or organisation you choose as long as you are of a sound mind when doing so and not under any undue influence.

## 10. Will The Government Tax My Estate When It Is Passed On To My Children?

**Answer:** Yes. In order for bequests in a Will to validly pass to the beneficiaries, the government collects a tax based on the total assessed value of the assets, excluding assets that have been placed in a Trust. In Nigeria, the tax is a percentage of the total assessed value of the assets, usually 10%. This is known as Estate Duty.

## 11. What is Probate?

**Answer:** Probate is the process that a deceased person's Will has to go through in order for the bequests in the Will to be valid under the Law. This includes things like the reading of the Will, the valuation of the entire estate and the payment of Estate Duty based on the assessed value of the entire estate.

## 12. If I Have A Living Trust, Do I Still Need A Will?

**Answer:** Yes. If you have created a Living Trust while alive, there might be a need to make have a will too. This happens where not all the assets owned by the individual were transferred to the Trust. Also, there might be a different structure in the Will that the individual does not want to be part of the Living Trust.

## 13. Who Needs Estate Planning?

**Answer:** Everyone needs Estate Planning. As long as you work and you have a bank account into which your salary or money for goods and services is paid into, you need some form of estate planning. The assets and property owned may determine the complexity of the estate planning but as long as you have anything of value and people who are dependants like a spouse, parents, siblings or children, then one needs an estate plan even if it is something as simple as a Will or else the laws on intestacy will apply and those who you did not intend may become beneficiaries of your assets.

## 14. What Does A Well-Designed Estate Plan Look Like?

**Answer:** A well-designed estate plan is one that captures in totality the wishes of the owner of the assets, makes provision for all of the dependants and beneficiaries and takes into account all foreseeable eventualities that may arise. It must also contain mechanisms that make amendments of the estate plan as flexible as possible in order for those managing the plan to pivot. For example, where a Trust is created, in the event of a change in government policies that could affect the Trust, the Trustees need to be abreast of such change and make the necessary adjustments in order for the Trust/Trust Fund not to be adversely affected.

## 15. I Have Only One Dependant, Do I Still Need A Will?

**Answer: Yes.** Even though you have only one dependant who might be a child or a spouse, you still need to write a Will. Why? After you're gone, you cannot predict which relation or friend may come up to make a claim against your estate. The safe thing therefore is to write a will that positively states who your heir is, why you made the distribution in the manner you did.

### FAQs on Trust

- Does A Trust Have Territorial Limitations?
- Are There Any Legal Qualities To Consider Before Choosing A Trustee?
- Can A Trust Be Set Up For A Predetermined Duration?
- Can A Beneficiary Alter The Object Of A Trust After The Demise Of The Settlor?
- Who Is A Successor Trustee?
- What Is Testacy and Intestacy?
- What Is A Letter of Administrator?
- Who Is A Heir?
- What Is A Power Of Attorney?
- What Is Testamentary Capacity?
- Who Is A Guardian and Who Can Act As A Guardian?
- Who Is A Fiduciary?
- What Does A Bequest Mean?
- What Is An Estate?
- What Is A Probate Court?

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