

Nerine Trust

Trusts – an introduction

Nerine is able to offer a full range of trustee services in Guernsey, the British Virgin Islands and other jurisdictions. If, on reading the following brief introduction, you wish to discuss your requirements further or require details of fee scales, please do not hesitate to contact us.

1. Origins of Trusts

The concept of a Trust has its origins in Anglo Saxon Common Law and was first employed as a means of avoiding the impact of medieval statutes or the payment of feudal dues.

In the 16th century, the concept of “uses” as they were then named became popular.

For example, land was transferred from one person “to the use of” another. This enabled the legal ownership of assets and property to be assigned to a third party (the “*feoffee to uses*”, the equivalent of “*trustee*” in current terms) who continued to manage the assets for the benefit of the original owner of the assets and his family. This was the forerunner of modern day Trusts. It was further developed in the eighteenth and nineteenth centuries when Trusts were used to tie up land or wealth for succeeding generations of a family.

Although the legal framework has obviously been refined and has subsequently been standardised in the form of Statute Law (in Guernsey, the Trustee Act 1989) the fundamental concept of a Trust remains unchanged.

2. Legal Ownership / Equitable Interest

It is very important in understanding the trust concept to realise that there are two forms of ownership or right to the assets within a Trust :

Legal Ownership

The assets of the trust are registered in the name of the Trustee and are under his or her control. They are legally owned by the Trustee.

Equitable Interest

The beneficiaries of a Trust have certain rights under the terms of the Trust but have no rights to ownership of, or legal title to, the assets. These rights constitute an “Equitable Interest” under the rules of equity, which originated in English Law.

3. Valid Creation of a Trust – The Three Certainties

The type of Trust commonly used in financial planning is known as an Express Trust. In order for such a Trust to be validly created, it is necessary that the so-called “three certainties” be present. These are as follows :

1. Certainty of intention or words – it should be clear that there is an intention for the trust to be created.
2. Certainty of subject matter – there must be certainty as to the property forming the subject matter of the trust (the trust fund).
3. Certainty of objects – there must be one or more legal persons as beneficiaries.

4. Types Of Trust Deed

The Trust Deed can take one of two forms :

1. a Deed of Settlement :

this will be executed by the Settlor (the client – the person who is transferring the assets into the Trust) and the Trustee.

2. a Declaration of Trust :

to which the person transferring the assets into the Trust is not a party - the deed is a declaration by the Trustee only (and also sometimes by the Protector – see “The Advantages of Creating Trusts”) confirming that he is holding certain assets within the Trust.

The modern trend is for the latter form of deed to be used, mainly because many clients wish to preserve their confidentiality by not being a party to the deed.

5. The Advantages Of Creating A Trust

The advantages of creating a Trust are amongst others :

- assets placed in Trust remain entirely separate from a person’s estate.
- the Trustee holds the assets entirely separate from his own property.

- title to the Trust assets remains in the name of the Trustee or another acting under him. Control of the assets therefore remains with the Trustee.

These advantages can be of great assistance in financial planning.

Trusts usually fall into two distinct groups :-

The Discretionary Trust

In this case the Trustee is given a wide discretion to benefit one or more of those named as beneficiaries. This gives the greatest flexibility and under the Laws of Guernsey such a Trust may operate for up to 100 years, although a Charitable Trust may endure for a longer period. A Discretionary Trust may be created with or without a Protector. In the latter case a third party is granted certain authority, without which the Trustee may not act.

The Life Interest Trust

In this case the person settling assets will normally enjoy the income from them during his lifetime with perhaps an option to the Trustees also to provide the Settlor with capital from the Trust. Upon the Settlor's death the assets would normally go to his or her descendants in such proportions and upon such terms as are provided for in the deed.