



Creating a trust with your will

The use of trusts in or alongside a will can provide flexibility and finesse to a testator who requires something more than the blunt instrument of a simple will. A trust that is established alongside your will is sometimes known as a pilot trust and the will is known as a pour over will.

Many testators are concerned that by making unrestricted bequests of wealth they may be placing a target on their loved ones for undesirables looking to take advantage of a vulnerable beneficiary. Fears that inherited wealth may stupefy ambitions and create spendthrift habits are also concerns often voiced by testators.

A will made in conjunction with a trust provides control and oversight and can help ensure that a beneficiary takes full advantage of the inheritance they receive.

Discretionary trusts are the most common type of trust used in conjunction with a will. However trusts can come in all shapes and sizes and provide or restrict the interests of the beneficiaries depending upon the wishes of the testator. It is important to note that a trust is not a one size fits all solution and legal advice is always recommended.

5 things to know about creating a trust with your will



A trust declared in a will is not established until the testator's death, which is useful for those individuals who wish to retain control of their assets during their lifetime or are unable to create an inter-vivos trust for tax reasons



The trustee can be anyone you wish. Usually the executor and trustee are one and the same. In Jersey a professional trust company is usually appointed as trustee and a law firm as executor



Trusts are often established in wills where a gift is made to a minor. If a minor inherits under the will and no trust provisions have been included, then a tuteur will need to be appointed by the Royal Court



A trust can be used to distribute specific personal chattels. A private letter of wishes is used in conjunction with the trust to specify how you would like your personal chattels to be divided up, which can be updated whenever you wish



A will trust can be especially useful for testators with blended families to make assets available to a spouse and children from a previous relationship during their lifetime



The trust is created during the lifetime of the testator with a nominal cash sum, which ensures there is no delay in the operation of the trust on the testator's death and enables the testator's beneficiaries to become acquainted with the trust



Often a will containing trusts provision can run to many tens of pages long. By gifting assets to the trustee of a pilot trust the will can be simplified



When a will is probated in Jersey it becomes a public document. By creating a separate pilot trust all that is referred to in the pour over will is the name of the pilot trust, maintaining a degree of privacy



Gifting through a trust allows a testator to place all manner of controls and restriction that would not otherwise be permissible when making bequests under a will



A pilot trust is often a client's first step into estate planning, with the client gradually adding assets to the trust over the course of their lifetime so that by the time they pass most of their assets are already being looked after by the trustee in trust. This may avoid the need for a will and probate altogether



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