



PANTHERA

ESTATE PLANNING

The Importance of Trustee meetings



- ! Trustee discretion is vital in maintaining the protection and efficiency of the Trust.
- ! It is important to make any wishes very clear, so the Trustees fully understand the intentions of the settlor.
- ! Appointing a professional Trustee ensures that the Trust will be managed as professionally and efficiently as possible.

In Detail

Clients sometimes question why the detail about what their beneficiaries will benefit from is not included in the Will

- The detail about who benefits from what, when and how is noted in the trust memorandum and not the Will.
- The Will merely directs all of the estate to the trust, so it is under control of the Trustees. This principle applies whether you consider using discretionary Trusts or Interest in Possession Trusts.
- If the assets are distributed by the executors of the Will, although these distributions are binding (which some clients like the idea of), there would be no asset protection.
- The reason assets are dealt with within the trust environment is that the trustees have discretion, and it is this discretion that enables the assets to be ring-fenced and protected as much as possible.
- It is important to make any wishes very clear, so the trustees fully understand the intentions of the settlor, after the settlor's death.
- It is also important to consider appointing trustees who will act appropriately and without bias such as choosing a professional, rather than just family members, who may have vested interests.
- Regular Trustee meetings and accurate minutes are key to show that discretion has been used by trustees in their decision making process.
- Although the memorandum is not binding, there is no reason why the trustees wouldn't adhere to it, but it also gives a degree of flexibility, so they can act as appropriate to maximise the protection going forward. All trustees have to agree to any action taken in England, Wales and Northern Ireland, by majority in Scotland unless the deed modifies this.

Flexibility

The flexibility is the mechanism to manage the trust in the most efficient way possible. As an example if a beneficiary subsequently became disabled, any assets distributed absolutely or as income would potentially affect their right to state help. So the trustees can then use their discretion to assist them by other means.

The Success of Trusts

The 'success' of Trusts is all down to their management and how the trustees apply their discretion and expertise. This therefore is another reason to consider appointing a professional trustee.

- Decisions made by the Trustees are minuted during Trustee meetings, so the discretion is evidenced and thus also shows that the assets remain within that protective trust environment. This can include decisions regarding the distribution of capital by the use of loans and dealing with trust income and ensuring the best rate of income tax is gained.
- The Trustee minutes also confirm to the Inland Revenue, Local Authorities and third party creditors, that the trust is under the control of the trustees and that discretion has been used. If decisions are not evidenced, the validity of the trust could be questioned, so accurate minutes are vital. If this was to happen then the assets would be exposed to those third party threats such as divorce, creditor claims and care fees.
- In the case "Re Hay's Settlement" the presiding Judge, Sir Robert Megarry Vice Chancellor of the Supreme Court, made it clear the Trustees must at least consider the use of their Trustee powers. Sir Robert Megarry made it clear that a Trustee cannot simply ignore his obligations and responsibilities. Although the Court cannot force a Trustee to commit to a certain act, the Courts will ensure that a Trustee at least considers the available options from time to time. By having a Trustee meeting, the Trustees can show the Beneficiaries of the Trust (and the Courts) that they have considered all of the available options in a considered manner.

- So dealing with assets within the Trust, rather than in the will, and appointing professional Trustees who understand fully how to administer and run the trust with discretion is essential, not only to protect the assets but also to maximise tax efficiency.



In Summary

- If the Trustees cannot show that their discretion has been exercised, then the trust, may lose the potential 'protection' that discretionary trusts offer.
- Appointing a professional trustee can ensure that the trust will be managed professionally and as efficiently as possible.