

Welcome to our bi-monthly newsletter – in this edition we discuss Trusts in Wills, including what a Trust is, the different types of Trust, what the role of a Trustee involves, how they are appointed, and the difference between Trustees and Executors.



Understanding  
Trusts and  
Trustees



## What is a Trust in a Will?

A Trust is a legal arrangement that can form part of a person's Will and come into effect upon death, granting the named Trustees in a Will control of assets, such as funds and property, on behalf of the beneficiaries. Various types of Trusts can be written into a Will, depending on an individual's circumstances.

Often, a Trust is set up because one or more of the beneficiaries is a minor under the age of 18 and therefore needs financial supervision. However, a Trust could also be set up because an adult beneficiary is incapable of managing their inheritance. It is also common for a Trust to provide income/property to an individual's second spouse in their lifetime, whilst also ensuring children from the first marriage will benefit after the second spouse's death.

### What is a Trustee?

A Trustee is an individual who is appointed to take care of certain assets on the behalf of those due to inherit. They will be responsible for managing and distributing these assets. In some circumstances, a *Testator* (the writer of the Will) may choose to appoint more than one Trustee; they are known as co-Trustees and will usually have the same duties. Alternatively, a co-Trustee may be appointed temporarily if the main Trustee is unable to act for any reason.

The Trustee will manage the assets on behalf of the beneficiary and oversee the distribution of the inheritance. They must act in the best interests of the beneficiary and follow the terms as they are laid out in the Will. However, if the Trustee is appointed to a *Discretionary Trust*, they are entrusted to make decisions about how the money should be spent.

**Contact us today for more information about Trusts in Wills.**



Will Trust  
variations



## What are the main types of Trust?

### Property Trusts

This is commonly used by people who co-own property as tenants in common. Rather than the share of the property being left to the co-owner outright, it is left to the Trust, which comes into effect upon the first death. It is best practice to prove the Will by obtaining a Grant of Probate. Then, the Land Registry can be updated to ensure the Trustee(s) are named on the Title Deeds (usually alongside the surviving co-owner). Ultimately, this will make the process easier when the surviving life tenant dies, as the Trustees can sign any documents on behalf of the first death. Usually, a separate Grant would be needed for the second death as well.


### Nil Rate Band Discretionary Trusts (NRBDT)

A Discretionary Trust is one where the Trustees have the freedom to dictate how the inheritance should be distributed amongst the named beneficiaries. A NRBDT is a version of this that ensures the full extent of a Nil Rate Band allowance (currently £325,000) is used. Previously, this was often used by spouses/civil partners so that the surviving partner could use the full allowance; this is now transferable upon the first death. Now, a NRBDT can still be used to leave an Inheritance Tax-free gift to someone other than their spouse. This will be managed by the Trustee(s) according to the terms in the Will Trust.

### Trusts for Minors

This is a very common type of Trust that provides for beneficiaries under the age of 18. Their inheritance will be held by the Trustee(s) until they are of age, or reach a specific age laid out in the Trust document. This helps provide for minors in the future and ensures that their inheritance is held by a trusted individual in the meantime.

**Get in touch to discuss the different types of Trusts in more detail.**



Who can be appointed as a Trustee?

## Are Trustees and Executors the same?

The role of a Trustee is not the same as the role of an Executor. The Executor is responsible for managing all aspects of estate administration, from obtaining probate (if applicable) to distributing inheritance to beneficiaries. The Trustee role comes into play at the time when beneficiaries are being paid from the estate; this is where the Executor role ends.

### Can an Executor also be a Trustee?

The Executor(s) of a Will can also be appointed as Trustee(s). However, it is important that the individual(s) taking on these roles understand the distinction between their responsibilities and that they will be dealing with the estate for a long time – Trustees can be involved with the inheritance for years after the death. It is always best to speak to the people you are naming in your Will beforehand to ensure they are happy to take on the duties.

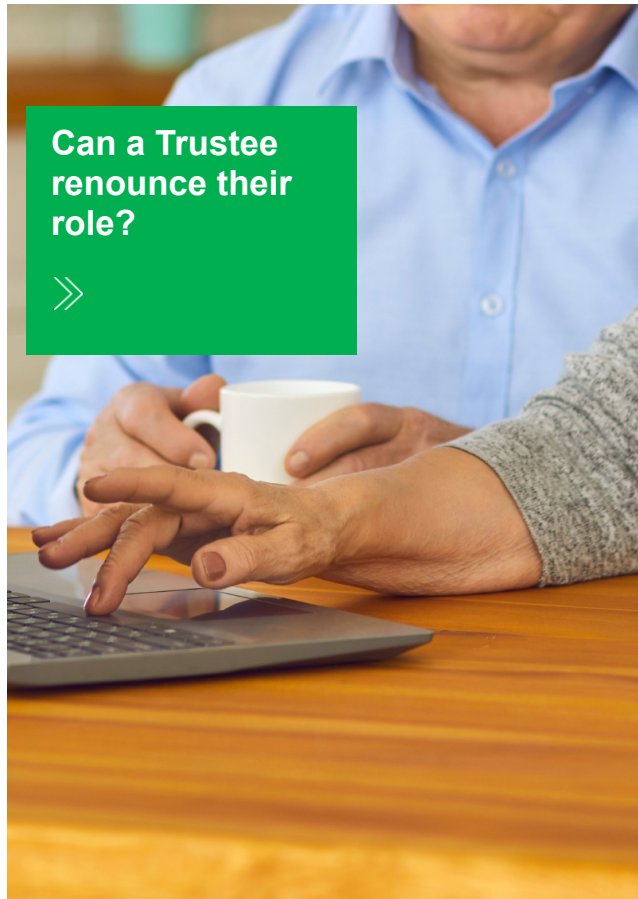
### Can a Trustee in a Will be a beneficiary?

A beneficiary can also be appointed as a Trustee, but it's good to ensure that at least one Trustee (if you are appointing multiple) is a non-beneficiary so that not everyone dealing with the inheritance has a financial interest in the Trust. This is especially important for Discretionary Trusts, as there could be conflicts of interest between Trustees and beneficiaries. In general, it's best practice to appoint at least two Trustees, regardless of the circumstances.

### What is the difference between a beneficiary and a Trustee?

Although a Trustee can benefit from the estate, they should not benefit from the Trust that they are handling unless the Will and Trust agreement explicitly state otherwise. Therefore, the difference is that the beneficiary is the one receiving the inheritance, whether it be money or other assets. The Trustee is the person that is managing this inheritance on their behalf.

**For advice on appointing a Trustee, get in touch.**



Can a Trustee renounce their role?



## Who appoints Trustees of a Will?

The Trustees and the terms of agreement are named in the Will. This must be decided and documented by the Testator of the Will – upon creating a Trust, they are also known as the *Settlor* of the Trust. As the Will names the Trustees and terms of the Trust, it becomes the Trust document.

When appointing Trustees, you should carefully consider your options. The individual(s) that you appoint should be trustworthy, reliable, and willing to act as Trustee. You can also choose to instruct a professional to act as Trustee, which would guarantee that they are a neutral and able third party.

It is only essential to choose and name a Trustee in your Will if you create a Trust in your lifetime/the terms of your Will create a Trust. However, it will likely not be needed if your estate is only passing to adult beneficiaries who have full capacity. A Trustee cannot be a minor.

### Can a Trustee renounce their role?

A Trustee can choose to renounce their role – they could also be incapable at the time they are needed. This is one reason for appointing multiple Trustees; if one Trustee is unable to act, the other(s) can step in. If there is only one Trustee appointed and they renounce their role, they are entitled to choose a new Trustee. Alternatively, a third party may step in, such as a Solicitor or professional Trustee.

### What happens if a Trustee of a Will dies?

If the Trustee dies before completing their role and other Trustees remain, the surviving individuals can appoint a replacement or choose to continue the role themselves. If there is only one Trustee appointed and they pass away, their Executor(s) or Administrator(s) can appoint a new Trustee on their behalf.

**If you need guidance on dealing with a bereavement, please contact us.**