

Common “reasons” for not forming a family trust (& why they’re incorrect!)



Family trusts are the best and most flexible way to protect assets, so why don't more people set them up? Here's some of the “reasons”, and our counter-arguments, for you to consider.

No spouse, no children or few assets

People without a spouse or without children consider that they never need to set up a trust. Some people believe they don't own enough assets to justify setting up a trust.

If you are in the above category, you should ask yourself these questions:

- Do you own a home or other assets, which are likely to increase in value?
- Is it possible you will marry or live in a de facto relationship?
- Are you in business or likely to be in future?
- Do you have or are you likely to have significant debts or a mortgage?
- Do you want to try and safeguard your assets against whatever may happen to you in future?
- Will you have children in the future?

If you answer “yes” or “maybe” to any of those questions, you should be looking at setting up a family trust now because your assets could be exposed to risks, such as, business creditors, will challenges, and relationship property claims (matrimonial and de facto couple property claims). Your assets could also be depleted by long-term hospital care or rest home charges; estate duty if it is reintroduced by government, and capital gains tax or other wealth taxes if introduced by government.

It's too late to set up a trust

Some people leave asset protection measures until late in their lives. At that stage, their options are limited because they have accumulated a large amount of wealth.

Even if you are a “senior” citizen, it is possible to preserve a significant portion of your assets if you have investments, which can cover your care costs for up to five years (say, \$130,000). Current MSD retirement care subsidy policy is to allow you to dispose of up to \$6,000 per year for the five years prior to your application for care and \$27,000 for each year prior to that.

Note that this limit is for each applicant and, in assessing the gifting of a couple (married or otherwise) MSD includes the gifting of both. To stay within the limit, couples are advised to gift \$13,500 each if they wish to maximise their eligibility for a subsidy.

So, if you transferred your \$500,000 home to a trust at age 60 and go into care at age 80, you will be allowed to have disposed of \$435,000 (15 yrs x \$27,000 plus 5 years x \$6,000). You will be deemed to own the balance (\$65,000) as a personal asset, which is below the current asset limit of \$213,297. The asset limit was set in 2012 and will only increase to keep pace with inflation.

The trust may be expected to contribute income it earns on the trust fund but the house you transferred to the trust should be safe for your family and yourself.

Without the benefit of a trust, you would own the house when you went into care and all its then value above the then asset limit would be liable to pay

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for your care until your net worth was below the asset limit.

Law changes

Even if government should legislate to remove the benefit of trusts, assets settled on a trust will not disappear and they will still be available to you.

We stress that the government has not even suggested that trusts be legislated away in any respect.

There really is no downside to setting up a trust apart from the initial costs, which are small compared with the substantial savings you could make. You could regard the costs as an insurance premium, which you pay now to insure against losing your property in the future. You only need to decide how much your peace of mind is worth and compare the cost to the value of the assets you stand to lose.

Loss of control

People often fear that when they transfer assets to a trust, they will lose control over their assets.

However, it is now common for only the people setting up a trust to be the trustees, either personally or through a company. So you will be in control.

We consider that being able to produce accounts for the trust which show that the trust's assets and income have been kept separate from your own and being able to demonstrate that the trustees have at all times acted credibly as trustees of the trust fund are more important than the old practice of having an independent trustee.

Accordingly, loss of control is no longer a relevant concern. Also, our trust deeds contain wide powers and your

trust will be administered to achieve your wishes.

High costs

As mentioned above, setting up a trust can be regarded as a form of insurance and the cost as the premium. We consider the cost is insignificant compared with the likely value of your assets and the potential value of your assets in future. You can probably afford the fees for an asset protection plan but can you and your family afford to lose your assets?

Procrastination

The dangers of delay are that, while you defer creating a trust, inflation increases the value of your assets that you may wish to transfer to your trust and the time available to protect your assets is diminished. So, delay increases the risk that you will have assets above the asset limit at the critical time.

The key is to put asset protection measures in place as soon as possible to ensure that assets are transferred at their lowest possible values and you have time to transfer the full value of your assets to your trust.

Act now—if you do nothing, your future wealth is at risk

If your overall objective is to work hard, accumulate assets to finance your retirement and to leave assets to your children, we recommend you act now. If you do not wish to take risks with your assets, the creation of a family trust is an essential step, in our opinion.

Please contact us for a free interview to see whether family trusts would benefit your family and you.

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April 2013

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