



John Szepietowski explores Understanding How Trusts Are Created

Trusts are a valuable way of managing and protecting assets for the benefit of others. They are widely used in estate planning, family arrangements, and even for charitable purposes. At their core, trusts separate the legal ownership of property from the right to benefit from it. This means trustees hold and manage property, but beneficiaries enjoy the benefit.

Key Requirements for a Valid Trust

The Three Certainties

For a trust to be legally valid, three elements—often called the “three certainties”—must be present:

Intention: The person creating the trust (the settlor) must clearly intend to do so. Vague language such as “I hope” or “I wish” is not enough.

Subject Matter: The property that will form the trust must be clearly identified, and if there are multiple beneficiaries, their shares must also be certain.

Objects: The beneficiaries must be identifiable. If it is not clear who is supposed to benefit, the trust may fail.

These requirements make sure that everyone knows what property is involved, who is managing it, and who will benefit.

Formalities

Trusts involving land must be evidenced in writing to comply with legal requirements. Trusts over personal property, on the other hand, can usually be created more informally, even orally, provided the essential elements are satisfied.

Transferring the Property

A trust is not complete until the trust property has been transferred to the trustees. If the transfer is not carried out properly, the trust may not take effect. This step is essential to make sure the trustees can carry out their duties.

When Can You Create a Trust?

Trusts can be created either:

During your lifetime (inter vivos): For example, to manage family wealth, protect assets, or assist with tax planning.

Through a will (testamentary trust): These take effect after death and are commonly used to provide for children, vulnerable family members, or to ensure assets are managed responsibly.

Why Trusts Matter

Trusts offer flexibility, protection, and peace of mind. They can be used to safeguard assets for future generations, provide financial support to loved ones, and ensure your wishes are respected. However, if the necessary legal requirements are not met, a trust may be invalid, leaving beneficiaries unprotected.

Conclusion

Trusts are powerful legal tools, but they require careful planning and the right legal formalities to be effective. Whether created during life or through a will, trusts help you manage your assets in a way that secures the future of those you care about. Seeking legal advice ensures that your trust is properly set up, valid, and tailored to your needs.

For further information on this topic or on any other legal area, please contact John Szepietowski or Kay Stewart at Audley Chaucer Solicitors on 01372 303444 or email admin@audleychaucer.com or visit our [LinkedIn](#) page.

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