Interior Savings

Form 3623 (11/13)

WHAT ARE THE DIFFERENT TYPES OF PERSONAL TRUST RELATIONSHIPS?

There are many types of personal Trust relationships, some of which are:

- Parent/guardian Trusts: Property is held in Trust for a child. In this type of relationship, the Beneficiary is named, such as "in Trust for Janie Smith". The property is usually held in Trust until the Beneficiary reaches the age of majority or until a specific event occurs (e.g., child enrolls in post-secondary education).
- Family Trusts: Property is held in Trust for a group of Beneficiaries related by family ties, such as the children of a couple.
- Informal public appeal Trusts: Property is held in Trust for one or more Beneficiaries, who can be named individually or as a group. If the Beneficiaries are a group, the relationship can range from family to geography to workplace. Informal public appeal Trusts are sometimes known as victim's Trusts, and are unique in that the property, usually money, is provided by anonymous individuals as the result of a public appeal following an unexpected event involving the Beneficiary(ies), such as an accident or natural disaster.
- Registered plans: The Canada Revenue Agency (CRA) regulates a wide range of personal Trusts that are allowed under Canada's tax laws. Many people are not aware that registered plans, such as Registered Retirement Savings Plans (RRSPs), are actually a type of personal Trust. Under an RRSP, you are the Settlor, the Credit Union or its central is the Trustee, and the Beneficiary is any individual you name or, if you do not name anyone, your estate.

OPENING A PERSONAL TRUST ACCOUNT

The requirements for opening a personal Trust account can include, but are not limited to, the following:

- a Trust document
- the Trustee being eligible for membership in the Credit Union.

While the funds in the personal Trust account may not belong to the Trustee, the Trustee is personally liable for any transactions conducted through the account.

The policies of the Credit Union may prevent it from opening an account for an undocumented personal Trust.

MORE INFORMATION

If you are thinking of creating a personal Trust, whether documented or undocumented, talk to a lawyer or another qualified professional, such as a certified accountant.

Once you have had your questions answered, we would be happy to help you open a personal Trust account.

GENERAL INFORMATION ABOUT PERSONAL TRUSTS

Interior Savings

This is general information about personal Trusts and is not legal advice. The term "personal" is used to distinguish between Trusts created by individuals and Trusts created by entities, such as corporations. Trust law is complex and situation-specific, and varies from one jurisdiction to another. Talk to a legal or tax professional if you are thinking about creating a personal Trust or if you have questions about changing an existing personal Trust. Your Credit Union may also have special requirements for personal Trust accounts.

WHAT IS A PERSONAL TRUST?

A personal Trust is a relationship where one individual, the Trustee, manages property for the benefit of another, the Beneficiary. Trust property can include anything from money to investments to real estate.

A personal Trust is created when the owner of the Trust property, the Settlor, transfers ownership of the property to the Trustee to be managed for the benefit of the Beneficiary. The Trustee must manage and administer the Trust property exclusively in the best interests of the Beneficiary and according to the terms of the Trust document (if any). The Trustee is not entitled to receive any benefit (e.g., interest income) from the property. The Trustee will manage the Trust property for the Beneficiary until the Trust comes to an end and the Trust property is distributed according to the terms of the Trust.

The terms of a personal Trust are usually written out in a document called a Trust deed, indenture, instrument or declaration, which sets out the authority and powers of the Trustee and the rights of the Beneficiary. The terms of the Trust instrument will describe when the Trust comes to an end and how the Trust property will be distributed at that time.

A Trust that comes into effect while the Settlor is still alive is known as an inter vivos trust. Many family trusts are inter vivos trusts. A personal Trust that only comes into effect upon the death of the Settlor is called a testamentary Trust. The terms of a testamentary Trust are usually set out in the Settlor's last will.

A personal Trust can be revocable, meaning that the Settlor can rescind or cancel the Trust, or irrevocable, meaning that the Settlor cannot rescind or cancel the Trust.

WHAT ARE THE BENEFITS OF A PERSONAL TRUST?

There can be many reasons for creating a personal Trust, some of which are:

- To ensure that the Trust property is properly managed and used for the benefit of the Beneficiary, such as paying for education. In some personal Trusts, the Beneficiary will only receive the property held in Trust when specified conditions are met. The conditions vary widely, but are usually age-specific (e.g., when the Beneficiary reaches the age of 25) or event-specific (e.g., when the Settlor dies).
- For tax purposes, such as minimizing the Settlor's income tax. Funds held in Trust can generate profit (e.g., interest, dividends, or capital gains) that can be taxed in the name of the Trust instead of the name of the Settlor. When funds are distributed to the Beneficiary, the Beneficiary may be responsible for paying the taxes. However, whether or not the Settlor is taxed depends on the specifics of the Trust.
- To simplify estate administration. The Trust can be a substitute for a Will and provide for what will happen to the Trust property upon the death of the Settlor. This step can be taken to avoid probate fees and other costs, as well as to accomplish other estate planning objectives.

WHAT ARE THE DRAWBACKS OF A PERSONAL TRUST?

There can be numerous drawbacks, some of which are:

- Cost: The drafting of a Trust document can be expensive, especially for more complex Trusts. It may be necessary to file income tax returns for the Trust.
- Loss of Control Over Property: Unless the Trust is revocable or gives the Settlor the power to control the administration of the Trust, the Settlor will no longer have any rights to the Trust property. Ownership has now been transferred to the Trustee, and the property must be managed for the benefit of the Beneficiary. Changes to the Trust may have to involve a court application, which is costly and time-consuming.
- Choice of Trustee: The Trustee has authority over the property held in Trust. It is important to appoint a Trustee who is competent to manage the Trust.

WHAT IS AN UNDOCUMENTED PERSONAL TRUST?

An undocumented personal Trust is a form of Trust that is not supported by a Trust document. Instead, the Trust relationship is determined by the circumstances and/or the conduct or dealings of the parties to the Trust. In such cases, the Settlor and Trustee are often the same individual. Undocumented personal Trusts are often used where the amount held in Trust is small, and/or the Settlor/Trustee wants to avoid the costs of a documented Trust.

Calling an arrangement a "trust" does not guarantee that the government will view it as a Trust. Without a Trust document, a Settlor/Trustee would have to prove through other means (e.g., transactions through an account) that a Trust relationship actually exists. Ultimately, a court may need to determine whether or not there is/was a valid Trust relationship.

Undocumented personal Trusts are often created to allow a parent to manage the property of a minor.