



Information Sheet: Asset Protection Trusts

A potential problem for those in financial difficulties

The current recession has claimed an increasing number of insolvencies and bankruptcies.

For individuals facing uncertain and difficult times in respect of their personal financial position a huge amount of time and energy is often taken up in considering various options in respect of voluntary arrangements with creditors or the potential of a personal bankruptcy. Assets, liabilities, income and expenditure are examined very closely.

One key component which is sometimes overlooked is the effect that any unexpected inheritance can have on the situation. If a family member died, then their Will or the Intestacy Rules could make financial provision for the person facing financial difficulties.

In some cases, this can result in the receipt of a substantial inheritance, which could be utilised to settle outstanding debts and liabilities, giving the chance for that person to start afresh.

However, in some cases unexpected inheritance can result in substantial inheritance going towards the settlement of outstanding liabilities before any potential Voluntary Arrangements are agreed or Personal Bankruptcy Discharged.

The legal solution

We would therefore advise that any person who is facing financial difficulties should immediately consider the use of Asset Protection Trusts by family members who may be thinking of leaving them an inheritance.

It is an extremely sensitive issue to talk to somebody about the provisions that they are going to leave in their Will, which is another reason why the matter is sometimes overlooked.

In one case that we dealt with, a son who had significant liabilities and had made himself bankrupt, had yet to be discharged. He then received a substantial inheritance from his mother's Will which all went towards the payment of his un-discharged creditors.

If the son had spoken to us, we would have advised him to discuss matters with his mother and for her to see a solicitor to discuss putting in place a Will which included an Asset Protection Trust.



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What is an Asset Protection Trust?

An Asset Protection Trust would normally be a Discretionary Trust.

The family members Will would state who the Trustees would be ie: the people who would be legally responsible for looking after the inheritance left to the trust.

The Will would also list who the potential beneficiaries of the trust are to be. This would of course include the person facing financial difficulties.

Because the trust is a Discretionary Trust, it is at the complete discretion of the Trustees acting in unanimity as to what they do with the assets. The discretion is usually governed by a Letter of Wishes which would spell out who the primary beneficiary of the trust should be and that if their financial problems are resolved, that the assets can be given to them absolutely, but if they were not and they still had financial difficulties, the monies should be kept and retained within the Trust. These protected funds in the trust would not be deemed to be assets belonging to the person in financial difficulty.

There are also other benefits to having a Asset Protection Trust. These can be discussed with you and your family by one of our legal advisers.

We know that dealing with financial pressures can be an intensely stressful and difficult time and we are sympathetic to our client's needs and to advising and discussing matters with them and their family to make sure that hard earned family wealth is not used to pay off creditors.

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