



Trustmark Law

Family Asset  
Protection Trust

P e a c e   o f   M i n d

# Trustmark Law

## Wills & Trusts



*An Englishman's home is his castle*



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The concept of Trusts dates back nearly a thousand years of the Crusades, when knights going off to fight would ask a neighbour to look after their castle and their lands until they returned. Of course many did not return, and this gave rise to arguments over ownership, with wives and children being disinherited. In cases where they did return, the neighbour had no duty to hand things back and was often reluctant to do so. The Law at that time only recognised absolute ownership and made no provision for someone to act as a custodian (or Trustee) on behalf of others. Over the centuries, numerous Acts of Parliament have been drafted to make Trusts a safe and secure way to hold your assets.



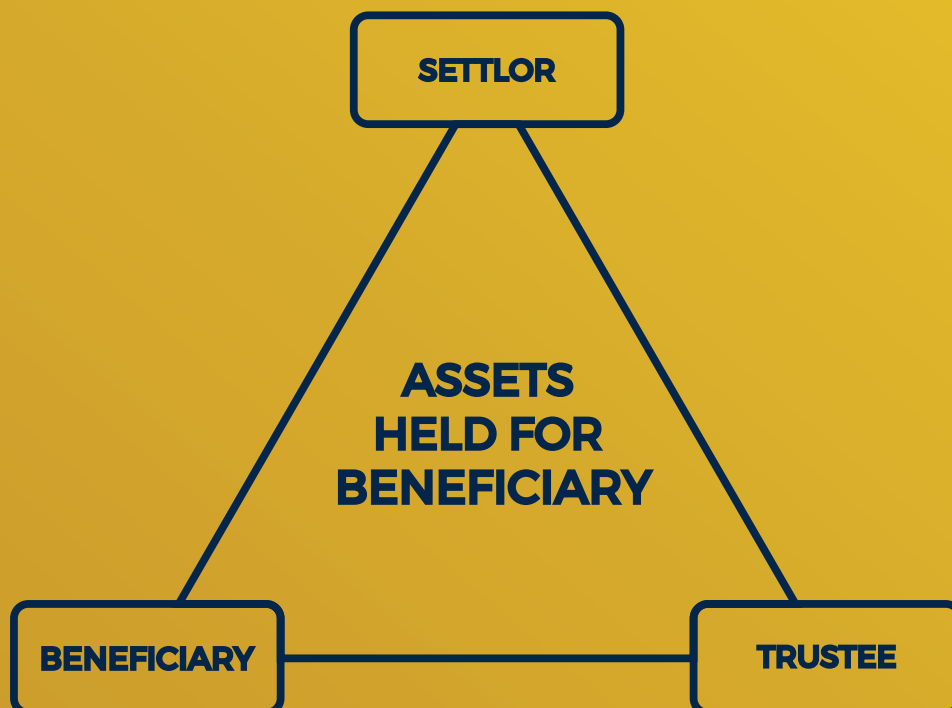


## The Structure of Trusts

Another name for a Trust is a '**Settlement**' and the person creating a trust is known as the '**Settlor**'. A Trust can be created during the settlor's lifetime.

A Trust is administered by '**Trustees**' who must hold the assets of the Trusts on behalf of the Beneficiaries and are not permitted to personally benefit from the Trust as a result of their appointment. In certain types of Trust, a person is appointed to act on behalf of the Settlor if he or she is unable to act for themselves.

In many Trusts, the Settlor is also a Trustee and a Beneficiary.





## The Family Asset Protection Trust (FAPT)

We are all keen to protect our assets for our loved ones. If we have children, we are motivated to provide for them throughout their lives and want what is best for them. You have probably drafted a Will and wish to ensure that the assets you have worked hard to acquire during your lifetime are passed on to your chosen beneficiaries after your death. However, your Will can only control the assets that you own at the date of your death and if these are eroded during your lifetime, there will be little if anything for your beneficiaries to inherit.

The Family Asset Protection Trust has been specifically designed to protect your assets for you during your lifetime and give you the peace of mind that they can pass on securely and intact to your spouse, your children and their bloodline. (Or other named beneficiaries) after your death.





## How the FAPT Works

### During your lifetime

Once the Trust has been created, you can use it to 'ringfence' your assets. Most people will protect their home and their savings, leaving some 'working capital' in their current account for day to day living and bills. Income from savings protected within the Trust can be paid directly into your current account to supplement earnings or pensions.

Just like a safety deposit box, assets can be added and removed during your lifetime. If you have large expenses that cannot be met out of normal income like a new car, a holiday, or house repairs, the appropriate sum is transferred to your account from the Trust.

You are named as the 'Principle Beneficiary' and retain full control of assets within the Trust while you are alive and have capacity. You are free to move home, or release equity from it at anytime.

The Family Asset Protection Trust is fully reversible, so if you change your mind at any time in the future, we are able to return everything back to how it is now.

### If you become mentally incapable

If you lose mental capacity, the Law states that you are no longer allowed to manage your own affairs. Assets held within the FAPT will then be managed by your Trustees on your behalf. Assets held outside the FAPT, unless you put Power of Attorney in place, your estate will fall under the control of the Courts.

Your Trustees can effectively stand in your shoes to make decisions on your behalf but these must be for your benefit. They are able to add or remove assets or use the income from the Trust to help you and improve the quality of your life.



## How the FAPT Works

### If you go into care

If you go into care, and you do not have a spouse or dependent relative living in your home, you will need to decide whether to sell it or rent it out. If you have gone into care and have lost mental capacity, your Trustees will need to make this decision for you. If the property is sold, the proceeds will continue to be protected within the Trust.

### After your death

After your death, the FAPT continues to work to protect your assets for your beneficiaries. The FAPT can continue to hold the assets safely within it or pay them out to specified individuals or charities.

The FAPT becomes extremely flexible after your death and has potential to continue protecting your family for 125 years from the day it was created. That means that all of the following benefits can not only protect you and your children but can also protect your grandchildren and great grandchildren!

### Control beyond the grave

A discretionary Trust allows the Settlor to decide how the Trust can be administered after their death. Therefore protecting grandchildren and children who may have physical disabilities or learning difficulties.



## Benefits of the FAPT

### No Probate fees or Delays

A key benefit of the FAPT is the avoidance of the need to obtain a Grant for Probate. If you have less than around £5,000 outside your Trust at the date of your death, many or all of the delays and costs typically associated with winding up an estate can normally be avoided.

While the administrations of an estate can often take a year or more and can cost thousands of pounds, this can be avoided with the FAPT and the assets protected by it can be distributed to your beneficiaries in a matter of days if desired.

***“Potential Saving: Thousands of pounds”***

### No Estate Claims

Not all family circumstances are straightforward. A claim against an estate can take years to defend, cost thousands in legal fees, and result in the loss of a large percentage of the estate. Even if the claim fails the legal fees and delays can cause major problems.

Unlike a Will the FAPT cannot be challenged on your death, so even if a claim is brought against your estate, this will only apply to any asset outside the Trust such as working capital in your current account. If this is kept to a minimum, claims are normally quickly withdrawn.

***“Potential Saving: Tens of Thousands of pounds”***



## Benefits of the FAPT

### No Sideways Disinheritance

Many people are concerned about the effects of remarriage after first death. The FAPT allows you to benefit your spouse without the risk of losing the assets to his or her new spouse or children.

The Trust allows you to 'lend' your assets to your spouse after your death. These assets can then be repaid to the Trust either on the death of your spouse or on some other specified event (such as remarriage) and will pass under the terms of your Trust to your children or other beneficiaries.

***"Potential Saving: Entire Estate"***

### No Court of Protection Control

As previously mentioned, you are no longer allowed to manage your own affairs if you become mentally incapable and a special court called the Court of Protection will take control of assets outside your FAPT. This is to protect you from yourself and to prevent the unscrupulous from taking advantage of you.

The FAPT allows you to choose the Trustees who can control your assets without the supervision of the Court. For most families, this allows common sense to prevail without the 'red tape', costs and delays normally experienced by those under the supervision.

***"Potential Saving: Thousands of pounds"***

### Ring Fencing assets

Many people are concerned about the effects of remarriage after first death. The FAPT allows you to benefit your spouse without the risk of losing the assets to his or her new spouse or children. It can also provide protection from other third party debtors and assist with care home fees.

***"Potential Saving: Entire Estate"***



## Benefits of the FAPT

### Financial Protection from Relationship Failure

Many people are reluctant to enter into a new relationship, or to progress a relationship fearing the financial consequences if the relationship fails. This is particularly true for those who have experienced a costly divorce or are widowed and want to protect their estate for their children.

By ring-fencing your assets with the FAPT prior to cohabitation, you can ensure that they are safe should the relationship breakdown in the future. This will also protect your children and grandchildren from losing their inheritance should their relationship fail in the future. The assets protected by the FAPT cannot be taken into consideration in the divorce settlement.

***“Potential Saving: Tens of Thousands of pounds”***

### Protection for benefit dependent beneficiaries

Assets inherited by someone that is benefit dependent will often result in a loss of those benefits. Ultimately the beneficiary is then the Government, not your relative.

The FAPT protects assets so that your beneficiary will still qualify for State support. This may be a temporary situation such as unemployment or a more long-term condition such as congenital birth defect. This is particularly important where the beneficiary has a condition that will prevent them from supporting themselves in the future. The FAPT can provide all of those extras not normally possible when relying on benefits.

***“Potential Saving: Entire Estate”***

### Protection from Generational Inheritance Tax

Assets held within the FAPT will not form part of the taxable estate of your beneficiaries. This means that assets passing to your son or daughter will not be taxed on their death. Your grandchildren will inherit from your Trust and not from the estate of their parents.

***“Potential Saving: Tens of Thousands of pounds”***



## Benefits of the FAPT

### Protecting from Care fees

A side benefit of the FAPT is that assets correctly held within it cannot be taken to pay for your care. With care fees often costing thousands of pounds per month, many feel that it is unfair to work all their life only to have their home and savings taken away in the last few years of their lives.

The FAPT offers effective protection from care fees provided that at the time the assets were protected it was not reasonably foreseeable that you would need to go into care.





## The Rules on Long Term Funding

You will normally be expected to pay for the full cost of your care if you have capital outside your Trust in excess of £23,250, unless you qualify for NHS Continuing Care. Chargeable assets include your home or any other property you own, bank and building society savings. National Savings and investments, Premium Bonds, ISA's, shares, Unit Trusts and other investments. Business assets can also be taken into consideration.

Assets correctly held in Trust and some life assurance policies are 'disregarded assets' if set up correctly and at the right time. If after a means test it is established that your chargeable assets are below the threshold, the local authority must pay for the full cost of your care needs not met by your income.

*We will give you personalised advice on the suitability of the FAPT to your circumstances.*

*It is not within the scope of this brochure to provide a full explanation of the rules. Please contact us with any specific queries.*





## Appointing Trustees

It is important that your Trustees are independent and act in your best interest at all times.

You are free to replace your Trustees at any time but you should take extreme care in doing so. Trustees administer the Trust in accordance with the provisions in the Trust document. Trustees may be family members.

## Naming Beneficiaries

It is normal to name your spouse or partner (if you have one) and your children and their bloodline as your beneficiaries after your death. In fact, the Trust can reflect your wishes as recorded in your Will, or hold assets for specific beneficiaries. You can of course name any beneficiaries including charities if you wish.

The beneficiaries are not entitled to anything from your Trust during your lifetime and are classed as 'potential beneficiaries' after your death. The structure means that different people can benefit from the assets in your Trust at different times as is the most flexible and efficient way to leave your estate.

## Bullet Point Summary

- Assets passed instantly on death.
- No probate fees for the assets in Trust.
- Control beyond the grave.
- Protection from sideways disinheritance.
- Protection from divorce settlements.
- Ring fencing of assets against bankruptcy and divorce.
- Provisions for beneficiaries on benefits.
- Trustees can be family members.



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Peace of Mind



## Trustmark Law

Wills & Trusts

**If you have any questions or would like to get in touch with one of our friendly team, please do not hesitate to contact us.**

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