

# Trusts - Family Matters

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**When considering trusts in matrimonial matters, one most commonly looks at those that have been created prior to the proceedings, and whether those trusts should be considered as part of the financial assessment or indeed be set aside or amended as a result of the pending divorce. It is a little known fact that the family courts have powers and jurisdiction over trustees that do not normally apply and seem to fly in the face of the current statutory legislature governing trusts.**

However, one should also consider how trusts can be used to assist in settling the matters that often arise from proceedings of this nature. They are immensely versatile vehicles and can be written to very exacting ends, which may be necessary to meet with the requirements of mitigation or judgements of the courts. Broadly speaking, trusts can be utilised to protect the interests of children, mitigate unwelcome tax liabilities and protect your future interests, to name but a few of their uses.

The main benefit of trusts is that they are prescriptive. They set out the manner in which assets are to be dealt with and subsequently held. The trustees are not only bound by the relevant trust documentation and judgement of the courts, but also the various Trustee Acts, so that they must carry out the intention of the trust.

It is a common scenario in divorce proceedings that where children are involved, the matrimonial home is often an area of dispute. In the event that one party or another continues to reside in the home, it may be necessary to preserve the rights of the other party in that property. A unwanted effect of this is often that on the subsequent sale of the property (often occurring once the children have left home), the party that was not granted residence in the home suffers capital gains tax on their share of the sale proceeds. There are various statutory concessions that assist in diminishing this exposure, but they largely rely on the party not residing in the family home to not have elected another house as their main residence. However, the use of a trust can be of significant benefit here by removing this exposure to capital gains tax.

Trusts can also bring comfort where other members of family have become involved in the final settlement, for example in the settling of an outstanding mortgage. Quite often, such a situation can lead to them wanting to protect the input they have provided for the transaction to be carried out. Usually the concern relates to how the funding will subsequently be used, or indeed whether it could later be reconsidered as part of the proceeding. The protection that a trust offers in these circumstances can help to ease these concerns.

Therefore, as you can see there are many more uses of trusts than those that attempt to utilise them to hide assets. mfg Solicitors LLP offers a great breadth in depth of knowledge of UK trust law, working closely with our matrimonial colleagues in these matters to provide the best solutions for our clients.

**For more details, or to  
arrange an appointment, please  
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