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ADVOCATES | LEGAL ADVISORS

## 7 Mistakes when setting up a trust



### **Introduction**

Although a trust may seem like a fairly straightforward document, simple errors can interfere and potentially invalidate what would have otherwise been a smooth transfer of assets, achieve the purpose and intention for which the trust was established. Even the smallest mistake can make things more difficult for the trustee to properly manage the trust.

### ***#1 Failing to Show Intention***

The courts are protective of individual property rights. So enough affirmative proof of intent must be shown. Simply put, the settlor must show that he intended to relinquish ownership of assets to the trust and eventually, to the beneficiaries. Failing to show true intention may lead to the trust being seen as a sham in an attempt to defraud any creditors for instance.

### ***#2 Failure to Fund the Trust***

A trust cannot be created unless the property changes hands, referred to as “funding the trust.” Failing to transfer the property or failing to place it into the trust may result in the trust not having sufficient assets to carry out the purpose of the trust. The most common

circumstances where a trust has failed are funding issues. This is where the settlor did not transfer the asset or deliver it into the name of the trustee who would become the legal owner of the assets.

### ***#3 Using Ambiguous Language***

One reason it is so important to work with an attorney when establishing a trust is to ensure it includes the proper language. A lawyer will know what language to include, and what to avoid. The language used in drafting a trust should be specific and clear to prevent misinterpretation. Ambiguities can lead to disputes among beneficiaries or challenges in court, potentially derailing the purpose of the trust. There is no need to use fancy, complicated words or legalese language. The provisions of the trust deed should be such that an ordinary layman without legal knowledge can easily interpret the contents.

### ***#4 Choosing the Wrong Trustee***

Selecting an appropriate trustee is crucial, as this individual or entity will manage the trust's assets and execute its terms. Choosing someone who is not trustworthy, lacks financial acumen, or is unwilling to take on the responsibility can lead to mismanagement and conflicts among beneficiaries. It's essential to appoint a trustee who is both capable and willing to act in the best interests of the trust and its beneficiaries. and expertise, possessing experience and knowledge of the modus operandi of trust law.

### ***#5 Neglecting to Adapt to Changing Circumstances***

Life events such as marriage, divorce, the birth of a child, or significant changes in financial status can affect estate planning goals. Failing to update the trust to reflect these changes can result in unintended distributions or disputes among heirs. Regularly reviewing and amending the trust ensures that it remains aligned with the purpose of the trust and adapting to current intentions and circumstances. Moreover, the trust document should be drafted in such a way that it allows it to be varied or amended to adapt to changing circumstances; it should be flexible.

### ***#6 Setting Up the Wrong Type of Trust***

Different types of trusts serve different purposes. Selecting the right type of trust depends on specific goals, financial situation, and family dynamics. The type of trust chosen can have significant implications for estate planning, tax obligations, and asset protection so the right type of trust must be set up for the aim it seeks to achieve and the needs it seeks to cater.

## ***#7 Choosing the Right Trust Jurisdiction***

This is a pivotal decision with profound implications for asset protection, tax planning, succession planning and overall wealth management. When establishing a trust, it is crucial to ensure that the jurisdiction's trust laws are both robust and flexible. This means they should adequately protect interests while also allowing for adaptability as needs evolve. People establish trusts for various reasons, but continuity is often a key factor. Settlers want their wealth to be securely passed down through generations. Therefore, choosing a jurisdiction with a strong and stable legal system is essential. Cyprus has well-developed legal and judicial system rooted in English common law. Additionally, the trust regime's recognition and enforceability in other jurisdictions can be crucial for effective cross-border asset management. The right jurisdiction will have a well-developed regulatory compliance framework in areas such as anti-money-laundering and know your client, a wealth of high-quality service providers with expertise in key fields like trusts, law, tax, and more. The presence of local ancillary services, from top accountants and law firms to corporate and fiduciary providers and major international banks, is also crucial.

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