

ABSOLUTE TRUST PACK.

Technical Guide
Absolute Trust Deed

INTRODUCTION

This guide has been written to explain what an Absolute Trust is, and how to place a Legal & General protection policy in our Absolute Trust. We've tried to use plain language to keep this guide easy to understand. You'll find explanations of any technical terms we use in the glossary on page 8 of this document. Whenever terms covered in the glossary appear in the main text, we've highlighted them in blue. We also have a range of online support to help you place your policy in trust.

TRUST INFORMATION

WHAT IS AN ABSOLUTE TRUST?

An Absolute Trust is a legal arrangement which allows the owner of a life policy (the **donor**) to give their policy to a trusted group of people (the trustees), who look after it. At some time in the future they pass it on to some people that the **donor** has decided (the beneficiaries). The beneficiaries are chosen at outset and cannot be changed in the future.

When a life policy is looked after in this way, it is said to be 'in trust'. The life policy which is in trust, and any payment received from the life policy are called the trust fund. This guide assumes that a Legal & General life policy will be the only asset in the trust.

WHAT ARE SOME OF THE MAIN BENEFITS OF USING AN ABSOLUTE TRUST?

Using an Absolute Trust for a life policy has lots of practical and financial benefits. For example:

Inheritance Tax – It should help to ensure that any money paid out from the life policy would not be part of the estate of the person covered, helping to minimise **Inheritance Tax**. Tax is covered in more detail on pages 6 and 7.

Quicker payout – It should help to ensure that the money paid out from the life policy can be paid to the right people quickly, without the need for lengthy legal processes. When you die, your personal representatives will need to obtain **probate** so that they have the authority to deal with your estate. In England and Wales either a 'grant of **probate**' or 'grant of letters of administration' is issued to your personal representatives. This process takes time and if you die without having made a will it takes even longer. Since the trustees are the owners of a policy placed in trust they do not have to go through this process in order to make a claim.

Control of funds – By placing your policy in trust, you can name who you want the proceeds to be paid to. A trust can control when the money from the life policy will be paid out. This can ensure that children receive some financial support from the money, but do not have full access to it.

Our draft Absolute Trust deed makes placing a life policy in trust easy, and Legal & General provide this service to our customers for free.

WHO'S INVOLVED IN AN ABSOLUTE TRUST?

There are three important roles:

The donor – The person giving away their life policy is called the **donor**. Once the **donor** has put their life policy into trust they no longer personally own it and have limited rights to say how it's dealt with. However, the **donor** is still usually responsible for paying the policy premiums, and is one of the trustees. It is possible to have joint **donors**, for example on a joint life policy. The **donor** chooses the trustees and the beneficiaries.

The beneficiaries – The people who receive payment from the trust fund are called the beneficiaries.

The trustees – The trustees take legal ownership of the trust fund from the **donor**. They then look after the trust fund, and, following a claim on the policy will make arrangements for payments to the beneficiaries.

SETTING UP AN ABSOLUTE TRUST WITH A LEGAL & GENERAL PROTECTION POLICY

WHAT ARE THE IMPORTANT DOCUMENTS?

There are two key documents:

The Absolute Trust deed – This is the legal document that creates the trust. The **donor** and the trustees must sign it. It names the parties involved, says what roles they have, and gives details of the life policy which is being put into trust. The provisions in the trust deed are the basis of the trust arrangement. The trustees must act according to the trust deed, and cannot do anything that the trust deed doesn't allow.

The policy documents – These include the policy documentation, which contains all the important information about the life policy, which forms the trust fund.

CAN ANY POLICY BE PUT IN LEGAL & GENERAL'S ABSOLUTE TRUST?

Legal & General's Absolute Trust can be used for most Legal & General protection policies. The trust can be used for new or existing policies. It should not be used for policies for business insurance (e.g. key person or shareholder protection), Relevant Life Plans, or for a pension term assurance (e.g. Tax Efficient Life Insurance Plan ('TELIP')). For more details please speak with your financial adviser.

WHAT IF I HAVE CRITICAL OR TERMINAL ILLNESS COVER?

The Absolute Trust automatically makes you the beneficiary of any proceeds arising from a claim as a result of a critical or terminal illness as described in the policy (if your policy has those benefits). If you do not want to keep these benefits for yourself and would rather they were held for the beneficiaries of the trust then please sign the box(es) in clause 7 of Part B of the trust.

CAN I GIVE THE TRUST A NAME?

Yes. You can give the trust a name in clause 5 of Part B. You do not have to give the trust a name if you do not want to.

CAN I EVER CANCEL THE TRUST?

No, not usually. However, there may be circumstances when a policy can be taken out of trust. You should contact your legal adviser for advice.

TRUSTEE INFORMATION

WHAT ARE THE MAIN DUTIES OF A TRUSTEE?

The trustees must understand the terms of the trust, and mustn't do anything that is not allowed by the trust or by the law.

The trustees must act in the best interests of the beneficiaries, and exercise a high degree of care and honesty and must all agree when making trust decisions.

The trustees must keep clear and accurate records and accounts of trust property and ensure that all tax, which the trust is liable for, is paid.

Being a trustee is an important responsibility, however it is unlikely that the trustees will need specific detailed knowledge of trust law to enable them to act effectively. Usually, the trustees will not have much to do until the time comes to make a claim. The trustees can seek professional advice should the need arise. The key thing is that they act honestly and in the best interests of the beneficiaries.

WHO CAN I APPOINT AS A TRUSTEE?

Generally anyone, but the people appointed must be over 18 years of age and of sound mind. The trustees should be people who the **donor** believes will act in the best interests of the beneficiaries. It is also a good idea for them to be resident in the United Kingdom for tax reasons. Solicitors and accountants can act as trustees but they will charge for their services.

CAN I BE A TRUSTEE?

Yes. The Absolute Trust automatically makes you a trustee.

CAN I APPOINT ADDITIONAL TRUSTEES IN THE FUTURE?

Yes, with our Absolute Trust the **donor** has the power to appoint additional trustees at any time. After you die, the trustees will have the power to appoint additional trustees.

HOW MANY TRUSTEES SHOULD I CHOOSE?

It is a good idea to have at least two trustees at any time. For this reason, it is normally sensible to appoint at least two trustees in addition to yourself.

WHAT HAPPENS IF A TRUSTEE DIES?

If a trustee dies, the remaining trustees can still carry on with the role, but a replacement could be appointed. If the trustee was the last surviving trustee, their legal personal representatives will have the power to appoint additional trustees or take over as trustees themselves.

WHAT CAN THE TRUSTEES DO IF I DON'T PAY THE POLICY PREMIUMS?

As legal owners of the policy, the trustees can arrange for the premiums to be paid but they are not obliged to make sure this happens or pay the premiums themselves. The trust will come to an end if, as a result of the premiums not being paid, the policy lapses with no value.

WHAT HAPPENS IF A TRUSTEE NO LONGER WANTS TO BE A TRUSTEE?

A trustee can retire from the trust with the consent of the other trustees, provided that there are at least two trustees following the retirement.

HOW DO THE TRUSTEES MAKE A CLAIM?

In the event of your death the trustees will need to send the following items to Legal & General's Customer Claims Department:

1. Absolute Trust deed (and any subsequent deeds)
2. The original policy documentation
3. A death certificate



The address to send these items to is:

Legal & General Customer Claims Department
City Park
The Droveaway
Hove
East Sussex
BN3 7PY

Once the claim is accepted, the trustees will be paid by direct credit.



For other claims, please call us on freephone (from landlines):

For terminal illness claims **0800 137 101**

For critical illness claims **0800 068 0789**

We may record and monitor calls.

BENEFICIARY INFORMATION

WHO IS A BENEFICIARY OF THE ABSOLUTE TRUST?

The Absolute Trust allows you to specify the beneficiary or beneficiaries of the trust. The details of each beneficiary should be entered in clause 4 of Part B. Where there is more than one beneficiary, you should specify the percentage share of each beneficiary's interest. If no shares are specified then each beneficiary should benefit equally. The beneficiaries are chosen at outset and cannot be changed in the future.

This means your beneficiaries are fixed and cannot be changed later. For example, children born later cannot be included or a spouse cannot be removed following a divorce.

Careful consideration should be given before specifying your spouse or registered civil partner as a beneficiary if Inheritance Tax is a potential issue for you (SEE [INHERITANCE TAX INFORMATION](#)).

Where there are joint **donors**, neither of them can benefit from the trust (other than in respect of any critical or terminal illness benefits), that they have kept for themselves.

WHAT IF THE BENEFICIARIES ARE STILL UNDER 18 WHEN THE POLICY PROCEEDS ARE PAID OUT?

The trustees will have the power to invest the proceeds for the beneficiaries.

CAN I BE A BENEFICIARY?

No. With the Absolute Trust the **donor** cannot benefit other than regarding any critical illness or terminal illness benefits that have been kept for them (known as the 'retained benefits').

INHERITANCE TAX INFORMATION

Whilst a policy in the Absolute Trust will not usually form part of your estate for **Inheritance Tax** purposes, on some occasions there is a potential for an **Inheritance Tax** charge to apply. These are summarised below, however if you are unsure about this or require more detail, you should discuss this with your adviser or a tax professional.

CREATING THE ABSOLUTE TRUST WITH AN EXISTING POLICY

Where an existing policy is placed into an Absolute Trust a transfer of value takes place.

Currently, individuals have an **annual gift exemption** of £3,000. As such, if the open market value of a policy falls within the annual exemption (and provided that this allowance is not used for other gifts) the transfer of value should be exempt.

Where a life insurance policy with no surrender value is placed in trust, provided that the **life insured** is in good health the open market value of the policy for **Inheritance Tax** purposes is likely to be negligible. Therefore, even if the **annual gift exemption** did not apply, the transfer of value would be nil.

For some policies, such as whole of life policies, the value of the policy for **Inheritance Tax** purposes is deemed to be the higher of the open market value of the policy (considered in the same way as described above) and the value of the premiums paid to date. It is unlikely to have a negligible value.

Where a transfer of value exceeds the available exemptions it will usually be a **potentially exempt transfer**. This means that, irrespective of the value transferred, there will be no immediate **Inheritance Tax** liability at the time of the transfer and after seven years should leave the estate of the donor entirely.

THE PAYMENT OF PREMIUMS

Inheritance Tax may be payable on premiums as they are considered to be a transfer of value.

However, currently, individuals have an **annual gift exemption** of £3,000. If this exemption is not used for other gifts, and if the premiums paid fall within the annual exemption the transfers of value should be exempt.

In addition, individuals have an **Inheritance Tax** exemption for normal expenditure out of income. If premiums fall within this exemption the transfers of value will be exempt. In order for the exemption to apply, it would need to be shown that the payment of premiums comes out of your income, that it leaves you with sufficient income to maintain your normal standard of living and that it was made as part of your normal expenditure.

Where a transfer of value exceeds the available exemptions it will usually be a **potentially exempt transfer**. This means that, irrespective of the value transferred, there will be no immediate **Inheritance Tax** liability at the time of the transfer and after seven years should leave the estate of the donor entirely.

DEATH OF THE DONOR

Where **Inheritance Tax** exemptions cover the payment of premiums (or the transfer of an existing policy) to the trust, there should be no charge on the death of the **donor** with respect to those exempt transfers.

However, an **Inheritance Tax** liability could arise if the **donor** dies within seven years of making a chargeable transfer into the trust. If the value of the gift together with the value of all chargeable transfers (including **potentially exempt transfers** that have subsequently become chargeable due to the **donor's** death) made by the **donor** in the seven years prior to the gifts in to the trust, exceeds the **nil rate band** applicable at the time of the **donor's** death, **Inheritance Tax** will be due on the excess value. This will be at the death rate of up to 40%. **Taper relief** should also be available to reduce the amount of tax payable for gifts made prior to three years before the **donor's** death.

With respect to the **donor's** estate, it should also be noted that the **nil rate band** available to the **donor's** personal representatives would be reduced by the value of any chargeable transfers made by the **donor** in the seven years before death, (including the full value of any potentially exempt transfers that have subsequently become chargeable due to the donor's death).

DEATH OF A BENEFICIARY

For [Inheritance Tax](#) purposes, the beneficiary of an absolute trust is treated as owning the trust assets comprised in the trust fund and if there is more than one beneficiary, then each will be treated as owning their specified share of the trust assets. On the death of a beneficiary, the value of their share of the trust fund would be included in the deceased beneficiary's estate for [Inheritance Tax](#) purposes.

Whether there would be any liability to [Inheritance Tax](#) following a beneficiary's death will depend on the value of the trust fund, the value of that beneficiary's personal estate and who benefits under the beneficiary's will or on their intestacy. The beneficiary's personal representative would normally be liable to pay any [Inheritance Tax](#) due on the beneficiary's death.

REDUCED INHERITANCE TAX RATE FOR ESTATES LEAVING 10% OR MORE TO CHARITY

A reduced rate of [Inheritance Tax](#) from 40% to 36% may apply where 10% or more of a deceased's net estate is left to charity. For details of whether this might be applicable to you please speak to your Financial Adviser or Solicitor.

GLOSSARY

Annual gift exemption

Gifts in any one tax year that total £3,000 or less are exempt from Inheritance Tax. Where any part of the exemption is unused it can be carried forward to the following tax year.

Donor

The person (or people if more than one) putting the policy into the trust.

Inheritance Tax

A tax which may be payable on certain transfers of assets, for example, a gift or on death.

Life insured

The person upon whose death (or diagnosis of a critical or terminal illness as defined in the policy (if included)) the amount of cover will become payable. Where a policy has more than one life insured then, depending upon the terms of the policy, the benefits may be payable on the first or the last of the lives insured to die.

Nil rate band

The amount of an individual's estate, which is subject to Inheritance Tax at 0%.

Potentially exempt transfer

For Inheritance Tax purposes it includes a gift (that is not otherwise exempt) made during life to an individual or an Absolute Trust. No Inheritance Tax is payable at the time a potentially exempt transfer is made.

Probate

The authority given by the court to your personal representatives to deal with your estate following your death.

Taper relief

For Inheritance Tax purposes, the reduction of tax payable on a sliding scale should the donor die between three and seven years following the making of a gift.

IMPORTANT NOTES

We have written this guide to give you general information about placing your Legal & General protection policy in trust. It is not intended to replace legal advice. If this trust does not meet your needs then you should talk to your legal and your financial advisers.

We have based the information in this guide on our understanding of the laws relating to trusts and [Inheritance Tax](#) as at 1 January 2017. Although we have made every effort to make sure that the information is accurate, we cannot take legal responsibility for any particular statements.

This guide is based on our understanding of current law and HMRC practice, which can change.

In preparing this guide we have assumed that only Legal & General's Absolute Trust is to be used in conjunction with Legal & General's protection policies. We can also provide Discretionary Trust deeds, Flexible (interest in possession) Trust deeds, and a Survivor's Discretionary Trust (for use with joint life first death policies only). The information in this guide does not apply to business protection, Legal & General have separate literature for business protection. Please see your financial adviser for more details.

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