What is an Inter-Vivos Trust?

An Inter-Vivos Trust is established by someone during their lifetime to manage certain assets or investments and support beneficiaries, such as family members. These trusts are governed by a trust deed, rather than a Will. These trusts allow assets to be managed on behalf of beneficiaries and, in some cases, generations of a family, without having to pass through the estate of family members that have passed away.

Can you set up a life-interest benefit through an Inter-Vivos Trust?

A life-interest benefit allows a person to benefit from an asset for the rest of their life, but without ultimately inheriting it. For example, a trust may allow a beneficiary to live in a property, earn the return on invested funds, or receive rental income from the property for the rest of their life.

In some cases you may wish to create a trust to manage funds for the remainder of your own lifetime, to relieve you of the burden of investment and management of those funds.

Who can be trustee?

You can appoint a family member or a friend, who is over 18 years of age and an Australian resident to act as trustee. You can also appoint a professional Trustee Company such as State Trustees, or a corporation that specialises in legal, accounting or financial planning. You may also wish to name yourself as trustee or co-trustee.

The trustee is the legal owner of the trust assets, and has a duty to manage these in the best interests of the beneficiaries as outlined in the trust deed.

What assets can be part of the trust?

There are many types of assets that can be held in trust. These may include:

- Investments
- Land or property
- Cash
- Other valuable assets; such as paintings, furniture, or jewellery.

The money and investments held in trust are also called trust capital. This capital may produce income, such as interest or dividends on shares. Assets may also grow in value resulting in capital gains for the trust.
Who owns the assets in the trust?

Once the assets have been transferred into trust, you no longer own them. The trustee becomes the legal owner of the assets and manages these for the benefit of the beneficiaries. However you may wish to be the initial trustee to ensure the trust is established and operated according to your wishes.

When can the trust assets be distributed?

Inter-Vivos Trusts can hold and distribute funds at any time according to the terms specified in the trust deed and the purposes the trust was created for. This may mean distributing the income of the trust amongst family members in a tax effective way for many years. It might also mean providing capital from the trust at a time when it will most benefit the beneficiaries in the future, such as when purchasing a home.

How long can the trust operate?

The trust will end at a time, or upon an event, specified in the trust deed. For example, this may be when the primary beneficiary dies or once all beneficiaries are over a certain age, or at the expiry of 80 years since the trust was established. At this time the remaining trust assets can be distributed to family members or charities according to the wishes of the person who established the trust. These rules will be specified in the trust deed when the trust is established.