Should you buy a property using a trust?

When Janet Schier purchased a block of land earlier this year, she didn't name herself as the title holder.

Rather, she bought the property via a trust, subsequently building two sets of duplexes via additional trust structures.

For Ms Schier, the use of multiple trusts was the right choice because of tax minimisation and asset protection; but in reality, it's a complex process.

Many people have only a vague understanding of how trusts work. Photo: Supplied

And while most people are aware of trusts and the general reasons for their use, many have only a vague understanding of how they work, and under which circumstances they become beneficial.

A trust is an arrangement where a person or company (the trustee) holds assets (property) in trust for the benefit of others (the beneficiaries).

“So before you purchase a property via a trust, you need to establish a trust deed,” says chartered accountant Brett Hetherington. “The deed sets out the rules for establishing and running of the trust. Once the trust has been established then the trustee can go about including or stating the trust will be the owner of the property.”

Janet Schier Photo: Supplied

According to Mr Hetherington, there are a number of reasons for utilising a trust to purchase property, such as asset protection, holding assets for the benefit of children or other family members and avoiding capital gains tax and stamp duty within families.

There are various forms of trusts including unit trusts, discretionary or family trusts as well as hybrid trusts.

A unit trust is where beneficiaries – or unit holders – purchase a fixed interest in a trust by purchasing units.

“A unit trust is useful where parties desire fixed ownership, and the ability to claim interest on a loan to purchase units as a tax deduction,” says Mr Hetherington.

In a family or discretionary trust the trust has the discretion to distribute income and capital to beneficiaries. Beneficiaries do not have a fixed interest but a right to trust assets depending on the trustees desire to distribute income or capital or both.

“A discretionary or family trust is a great investment structure for families as an intergenerational tool, assets can be handed down to children or grandchildren without incurring capital gains tax or stamp duty.

“The trustee has the discretion as to what family members can receive income and/or capital distributions.

“The fact you are a beneficiary of a trust does not mean you have any ownership in trust assets.”

A hybrid trust has the workings of both.

While trust structures do offer benefits, Mr Hetherington says there are some common mistakes to be aware of, such as thinking that you can distribute losses and not structuring the investment to take advantage of tax benefits.

It’s also important to be aware that tax or legal changes might require an amendment of the trust deed.

“Interestingly, professionals agree a trust structure could be an appropriate vehicle to save for retirement other than superannuation,” says Mr Hetherington.