

TRUSTS

WHAT IS A TRUST?

A trust is a legal relationship in which a person(s) holds an interest in property for the benefit of another person(s) or for a specified object or purpose.

There are 3 categories of persons involved in a trust relationship:

- The settlor or donor - the person who creates the Trust by transferring (settling) property into the trust initially or at later times.
- The trustees - the persons who hold the property or assets of the Trust and administer the Trust for the benefit of the beneficiaries. Trust assets are held in the name of the Trustees.
- The beneficiaries - the persons who benefit from the trust by way of payments of capital and/or income. They may at the discretion of the Trustees, be recipients of payments from the Trust during its term.

USE OF A TRUST

There are a number of reasons to form a family trust and potential benefits that arise from doing so. These include:

1. **Asset Protection**
Assets in a Trust will generally be safe from claims by creditors in the event of personal bankruptcy or the insolvency or a company in which a person is a shareholder or director.
2. **Continuity**
Trusts can continue to operate after the death of the settlor without any immediate need to sell any assets to distribute among beneficiaries. Progressive release of funds to beneficiaries can occur and distribution to vulnerable beneficiaries can be delayed until appropriate.
3. **Death Duty or Wealth Tax**
Assets in a trust are not subject to death duty or any form of "Wealth Tax" at the current time. If a capital gains or capital transfer tax is introduced then, provided such tax is assessed on the profit made on any sale, and provided the

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trust does not dispose of property, such tax could possibly be avoided. On the death of the original settlor of the trust, the assets transferred to the trust do not need to be transferred to the Settlor's heirs. The heirs can continue to receive income and may take control of the assets simply by becoming trustees. Accordingly an effective transfer of the benefit of assets can take place without triggering a physical transfer of the property and a possible tax.

4. **Property (Relationships) Act 1976**

Generally assets in a Trust will not be at risk in the event of a marriage break up of either of the settlors or of any of their children. It also can protect family heirlooms.

5. **Family Protection Act**

Assets in a trust are generally safe from family protection claims by disgruntled family members who disagree with the provisions of a deceased person's Will.

6. **Protection in Old Age**

Trusts reduce the risk that an elderly person will lose family assets through an unwise marriage or Relationship late in life and a subsequent Relationship property settlement. They can also protect against the undue influence of other family members or poor financial decisions.

7. **Irresponsible Children or Their Spouses**

Assets can be protected from being wasted by children if they receive assets in the Will of their parent at an age when they are still immature and not financially responsible. Income can be made available but capital retained until children reach a specified age.

8. **Income Spreading**

Income earned by the Trust can be spread among any one or more of the beneficiaries so as to take advantage of their own lower tax rates, ie: spouses, partners, children and grandchildren.

9. **Cost Effective Estate Administration**

The costs of winding up your estate may be substantially reduced or eliminated altogether.

HOW DOES A TRUST WORK?

1. Assets are sold by the settlor at market value into the Trust, which is controlled by the trustees. The trustees have an obligation to deal with this property for the benefit of the beneficiaries. These assets can be, for example, your home, bank investments, shares, chattels or life policies. These can be transferred all at once or progressively as appropriate. Some assets cannot be transferred until accrued tax losses are used up.

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2. Any purchase price owing to the settlor for selling the property into the Trust can be structured as a debt owing by the trustees to the settlor. Following the abolition of gift duty property may also be simply transferred at once to the Trust without any debt back.
3. Income generated by the Trust and capital comprising the property owned by the Trust can be distributed to the beneficiaries as specified by the settlor or at the discretion of the trustees. Some trusts provide that capital can only be paid out to discretionary beneficiaries during the lifetime of the settlor(s). The trustees also have the power to make distributions to individual beneficiaries to the exclusion of other beneficiaries although this needs care. The beneficiaries under a discretionary trust have no power to require the trustees to make any distribution to benefit them.
4. Income which is retained in the Trust is taxable to the trustees at a rate of 33%, whilst income which is distributed to beneficiaries is taxable at their personal rates. This enables trusts to be used as a tax saving vehicle by distributing income to beneficiaries at the lower tax rates.
5. A trust can be established in such a way that the settlor can still enjoy the benefit of Trust assets. The settlor(s) can reserve the right to appoint and remove the trustees. The control of trustee appointment desired by settlors after the death of one of them can be specifically designed into the Trust Deed.
6. Trusts can operate for limited periods, but have a maximum life of 80 years. Most trusts enable the trustees to terminate the trust at any earlier date they so determine.

DIFFERENT TYPES OF DISCRETIONARY TRUSTS

- **Mirror Trusts**

These comprise two separate trusts. One is created by a husband for the benefit of his wife and children and any others as discretionary beneficiaries. The other is created by the wife for the benefit of her husband and children and others as discretionary beneficiaries. The husband and wife transfer their property respectively into the trust in which they are not a beneficiary. This results in the property being owned in equal shares by the two trusts, the income and capital of which can then be distributed to the husband and/or children, or to the wife and/or children, respectively.

This type of trust was used extensively when death duty was in place and is now less frequently used due to the fact that, upon the death of one spouse, the survivor loses potential access to capital and income of assets in the Trust established by the survivor.

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- **Sole Settled Trusts**

A settlor can create a Trust for the benefit of a range of beneficiaries including himself or herself. In this situation there is an independent trustee(s) and the beneficiaries usually comprise a wide class of persons and/or organisations.

- **Joint Settled Trusts**

Joint settlors such as husband and wife can create a Trust in which they are trustees jointly with an independent trustee. These trusts best suit people in stable committed relationships of some duration.

Most trusts are discretionary trusts. As mentioned earlier, the trustees have discretion as to when to vest the income or capital in the discretionary beneficiaries prior to the final termination date.

- **Parallel Trusts**

Two trusts are created, one by each spouse, in the same form as joint settled trusts with the right to appoint and remove trustees being given exclusively to one partner/spouse in one of the trusts. The beneficiaries are the same in each of the trusts but only one spouse is a trustee. This format is particularly suitable for consideration where there are blended families or a desire to keep separation of assets transferred in by each spouse/partner.

MEMORANDUM OF WISHES

A memorandum of wishes is a document recording your wishes for the distribution of the trust income and assets so they can be given effect to upon your death. It may also record your wishes for appointment of new Trustees after your death or on your disability. The memorandum has no legally binding status on the Trustees but is a valuable, if not essential, indication of how you would like your assets to be dealt with following your death and there is no reason why, in the conduct of their duties as your Trustees, they should not observe it. As the memorandum is an informal statement it can be written by you and changed as frequently as you wish.

RELATIONSHIP OF WILL TO TRUST

In your Will, it may be appropriate to leave personal effects, chattels and motor cars to your spouse/partner and the rest of your personal estate direct to the trust. This avoids the need for the survivor to subsequently gift into the Trust the assets received as a legacy from the deceased. The same benefit is derived from assigning life policies to the Trust; upon the death of the Life Assured, the insurance moneys go direct to the Trust.

TRUSTEE'S LIABILITY

A trustee's role is a serious one. People approached to be an independent trustee should give consideration to their personal liability and take advice. Careful provision should be made to ensure that the trustee's liability to third parties is limited to the assets of the trust. When the trust borrows from say, a bank, then a clause can be inserted in the bank's mortgage recording the fact that the independent trustee's liability is limited to the assets of the trust. Provided regular meetings of the trustees are held eg once every 6 or 12 months and appropriate resolutions made all matters affecting the trust are easily monitored and there should be no major concerns regarding liability.

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COSTS OF FORMING A TRUST

The costs of forming a trust include the initial legal set up costs and modest annual administrative costs usually in relation to annual gifting (if required) and a succinct review of personal circumstances and any developments in Trust law and practice. A Trust must obtain a tax number but need not file returns if it receives no income. It may need to be GST registered.

ADVICE ON FORMATION

Significant legal issues are involved in the formation of a Trust and transfer of assets to it. There is a need to harmonise your property ownership mode, your Wills, the Memorandum of Wishes and the Trust set up. Accordingly it is vital to take legal advice from a Queen City Law practitioner experienced in this area of work. Each person or couple's personal circumstances are different and at Queen City Law we see our role as providing advice and legal structures that suit your situation, life goals and needs - "purpose built" you could say rather than "off the shelf".

We invite you to take advantage of the opportunity for an initial interview at any one of our three offices.

Disclaimer

We have taken every care to ensure that the information given is accurate, however it is intended for general guidance only and it should not be relied upon in individual cases. Professional advice should always be sought before any decision or action is taken.

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YOU

TRUST

Sell house
to Trust
\$200,000.00

Deed of
Acknowledgement
of Debt



Trust owes YOU \$200,000.00

TRUST

YOU

Deed of Acknowledgment
of Debt

Trust owes YOU
\$200,000.00

You forgive \$20,000.00 of the debt

\$200,000.00
- 20,000.00

\$180,000.00
is left owing

A further \$20,000.00 (or any other amount) can
be gifted each year

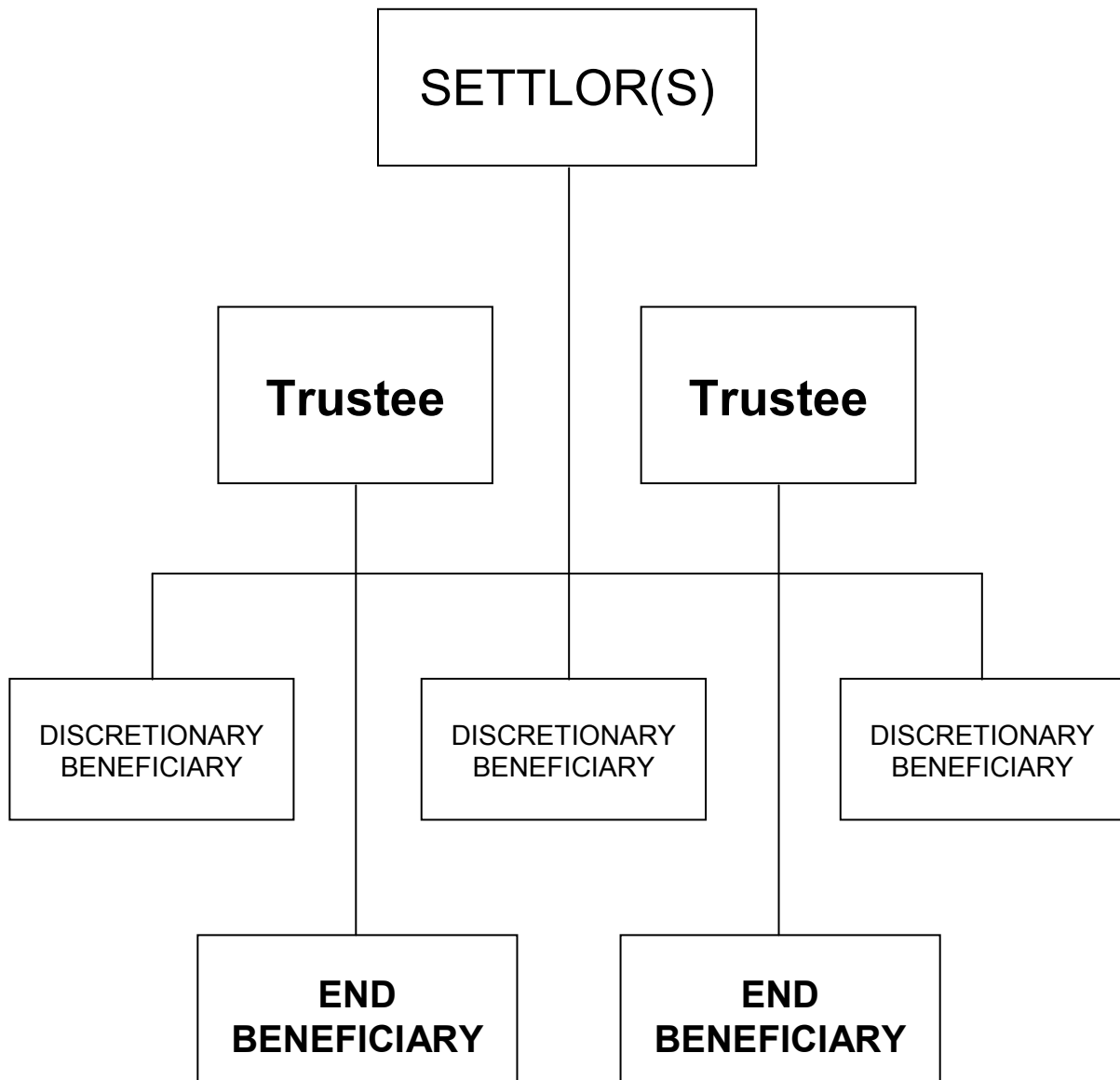
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THE FAMILY TRUST



- The Settlor**
- ★ Sets up the Trust
 - ★ Appoints the Trustees
 - ★ Appoints and removes beneficiaries

- The Trustees**
- ★ Administer the Trust
 - ★ Make decisions of the Trust
 - ★ Pay money to selected beneficiaries

- The Beneficiaries**
- **Discretionary Beneficiaries**
 - ★ May receive money from the Trust
 - **End Beneficiaries**
 - ★ Ultimate recipients of any money left after Trust wound up

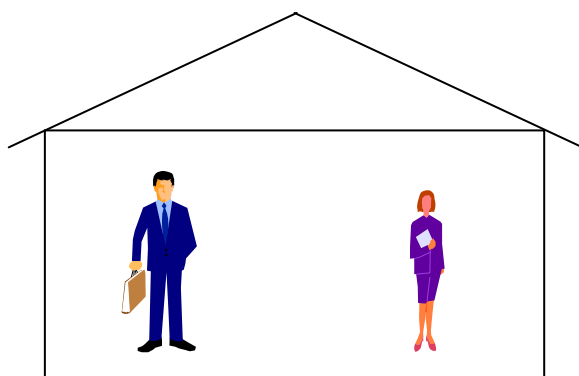
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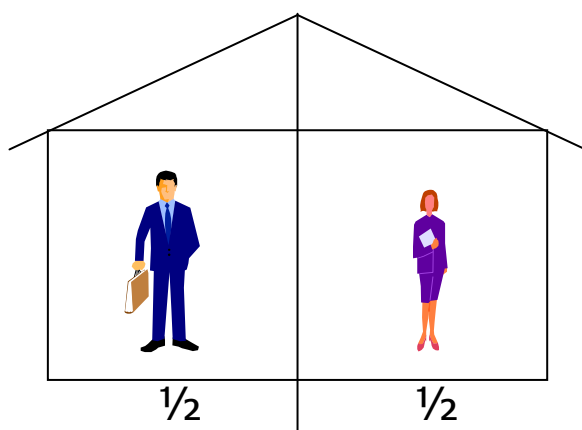
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JOINT TENANCY



Both own all the property
The survivor takes all

TENANCY IN COMMON



Each owner owns a share of the property
and
can leave it by their Will to whom they decide
(reserving a life occupancy right, if so wished,
to the survivor)

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TRUST

- (1) Earns income \$3,000.00 (taxable at 33%)
- (2) Trustees decide which beneficiaries should receive it

Trustees must decide within six months of end of tax year to:

- (a) tax the income within the Trust as "trustee income" at 33%; or
- (b) allocate the income to beneficiaries:

eg:



\$1,000.00

A

\$1,500.00

B

\$500.00

C

A, B and **C** show the money earned as income in their tax returns.

If a beneficiary's total income (from all sources including the Trust) falls within one of the lower tax brackets then all income (including the money from the Trust) is taxed at that beneficiary's lower tax rate.

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BARRISTERS & SOLICITORS

ESTIMATE OF FEES AND DISBURSEMENTS ASSET AND ESTATE PLANNING

Fees (exclusive of GST)		As at 18 August 2014
Family Trust:		
Advice preliminary to establishment (initial meeting)	350.00	
Preparation of Trust Deed Execution of Deed Incidental attendances	900.00	1,250.00
Property Transfer & Gifting:		
Agreement for Sale of Property (one property) Memorandum of Transfer / Client A&I Form Notice of sale to Local Authority and Insurance Company	550.00	550.00
Deed of Acknowledgement of Debt, Partial Forgiveness Gift Statements to IRD Incidental attendances	450.00	450.00
Extra: New or varied mortgage (if applicable)	250.00	250.00
Wills: for two	150.00	150.00
Enduring Powers of Attorney: (Property & Personal Affairs – for two)	150.00	150.00
Total Fee (exclusive of GST) – based on the abovementioned items		2,800.00
GST – based on the abovementioned items		420.00
Disbursements (GST inclusive):		
Transfer of title	80.00	
Search fee	5.00	
Extra: Mortgage Release and new Mortgage (if applicable + \$160.00) Mortgage Variation (if applicable + \$80.00)		
Subject to the office service fees (including the e-dealing service fees)		TBA

- The cost **estimate** provided is an indication only and the final cost might vary depending on various factors including the complexity of each case. The cost estimated attached herein is subject to change without notice.
- Our office service fees including the e-dealing service fees will be added to the above fee estimate.
- Any other documents required or additional attendance will be subject to Queen City Law's terms of engagement.

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BARRISTERS & SOLICITORS

TRUST FORMATION

INTERVIEW SHEET:

1. **NAME OF SETTLOR(S):** **OCCUPATION(S):**

Single: (1st or only Settlor)

Joint: (2nd Settlor – if applicable)

2. **TRUSTEES:**

(a) Is an independent Trustee desired YES/NO

If unsure and need legal advice - tick box

(b) **Names of Trustees:**

Occupation:

IRD No:

(c) Independent Trustee required at all times YES/NO

3. **NAME OF TRUST**

eg: The Jones Family Trust

or R G and W J Jones Family Trust

or Other - eg: generic name

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4. **BENEFICIARIES:** (Tick)
(Unless otherwise stated Beneficiaries are fully discretionary as to income and capital).

- Children.....
- Grandchildren...
- Settlor(s).....
- Company in which a Beneficiary holds 51% min. of shares.....
- Another Trust established for benefit of any Beneficiary.....
- Charities.....
- Other - eg: nephews, nieces, spouse (former or future).....

Names of Children:

Dates of Birth

_____	_____
_____	_____
_____	_____
_____	_____

Ultimate Beneficiaries: (To receive capital when Trust wound up)

- Children.....
- Grandchildren (if children predecease).....
- Other.....
- Capital Distributions only during Settlor's lifetime..... YES/NO

NB: If yes, special wording needed in Deed

5. **RIGHT TO REMOVE/APPOINT TRUSTEES:**

(a) **Single Settlor** (where sole settlor)

After death of settlor - executor(s) of Will of settlor.....
.....

OR

Person named in Will or By Deed of Settlor.....

(b) **Joint Settlers** (husband and wife)

(i) Surviving settlor.....

OR

Person named in Will or by Deed of either deceased settlor
(eg: executor) **together with** surviving settlor.....

(ii) Surviving settlor's executor.....

OR

Executors of both settlors.....

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6. **WILL(S) CURRENT:**

YES/NO

Update required YES/NO

Forgiveness of debt owed by trust required YES/NO

Assets to be left to trust (ie: linkage with Trust) YES/NO

Appointment of person(s) to exercise power of
appointment/removal in Family Trust YES/NO

Trustee Appointment or bequest to Trust YES/NO

7. **PROPOSED BANKER FOR TRUST:**

Bank _____ Branch _____

Contact Person: _____

8. **ACCOUNTANT:**

Firm: _____

Contact Person and No: _____

9. **INSURANCE DETAILS:**

Company: _____

10. **ANY GIFTS OVER \$2,000.00 MADE IN LAST 12 MONTHS:** YES/NO

If Yes: \$ _____ Date of Gift: / /20

Checklist Documents

Document	Comments & Details	Yes / No
Trust Deed		
Matrimonial / De facto / Civil Union – Contracting out agreement / section 21 Agreement		
Memorandum of wishes		
Trustee Resolution		
Instruction letter from the Trustee		
Wills		
Deed of appointment – trustee		
Deed of indemnity – trustee		
Deed of acknowledgement of debt		
Deed of gift / Deed of forgiveness of debt		
Agreement for sale and purchase – Base document		
Conflict waiver / Consent letter		
If mortgage is involved – Consent from the mortgagee		
LINZ documents – Client A&I form & other base documents		
Declaration of insolvency – from the settlor		
Lease document – including any lease for life		
Trustee resolution – to cover any transaction done in relation to the trust formation & asset transfer etc		
Property Sharing Agreement		
IRD Application form – Trust IRD No.		
Information concerning the insurance		
Notice of sale to relevant parties – councils		
Contact details of the accountants		

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CHECKLIST

FINANCIAL POSITION

	Assets	Values	Liabilities	Owner
Real Estate				
Chattels				
Investments: Bank and Other				
Life Insurance				
Superannuation				
Potential Inheritance				
Business				
Other				

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