PIER LAW
LAWYERS

FAMILY TRUSTS

How can a Family Trust benefit you?

1. Allows estate planning during your lifetime for the advantage of you and your family

2. Protection of assets should you need residential (rest home) care as an elder

3. Provide for children from a previous relationship using a separate entity

4. Separate assets from your personal wealth for the purpose of asset threshold tests

5. Separating assets from the relationship property pool in the event of relationship split

6. Protection of assets from creditors

7. Set money aside for a specific purpose (e.g. children's education) whilst you can and know it's safe despite unknowns in the future

8. Application of a lower tax rate (dependent on your income tax rate bracket)

What is a Family Trust?

- An entity which imposes an obligation on the Trustees to deal with Trust assets for the benefit of the Trust beneficiaries.

- The Family Trust is established by a legal document called a Trust Deed.

- A Family Trust is not a separate legal entity in the same way that a company is.

Who is involved in a Family Trust?

There are three parties:

1. The Settlor(s) – establishes the Family Trust and provides money, property or other assets to be held in trust.

2. The Trustees – take legal ownership of the Trust property and look after them in accordance with the rules set out in the Trust Deed and the Trustee Act 1956.

The Trustees should be people trusted by the Settlors and can include the Settlors themselves.

It is recommended that there is an independent Trustee e.g. accountant, friend or family member so that the Trust does not appear to be a "sham".

Pier Law has a Trustee company which may be appointed as an independent Trustee. This is at the discretion of Pier Law and dependent on the assets held by the Family Trust.

3. The Beneficiaries – the people selected by the Settlors to receive the benefits of the Family Trust.

Commonly the beneficiaries include the Settlors, their children, grandchildren and others as nominated.

Ultimately the beneficiaries usually receive legal ownership of the Trust assets.

What can I use a Family Trust for?

Commonly people transfer assets from their personal ownership into a Family Trust. Accordingly the legal owners of the assets become the Trustees of the Trust.

There are many advantages of having assets in Trust as opposed to personal ownership, as outlined on the covering page. However a key advantage to this and the reason behind many Family Trusts, is that the assets in the Family Trust are not considered "yours" for the purpose of determining your asset level.

This is advantageous if, for example, you need rest home care or want to arrange your assets in anticipation of needing care. Currently there is a Government imposed asset threshold of $200,000.00 whether you are a couple or a single person.

Accordingly if you require rest home care and your assets (including your home) total more than this amount, you will need to contribute toward the cost of your care until your assets are reduced to the threshold amount.

Transferring the home into Trust would reduce the total sum of your assets significantly so that your care would likely be fully subsidised by the Government and you could retain any cash reserves which you have worked hard to save.

How do I Transfer Assets to a Family Trust?

Transferring assets to a Trust is comparable to selling the assets to a third party – the exception is that no actual money changes hands; instead a debt is created as between you (the vendor) and the Family Trust (the purchaser).

The debt is reduced by way of annual gifting. Currently a person may gift $27,000.00 per year, or $54,000.00 for a couple, without incurring Gift Duty.

At the date of print, the Government has just announced its intention to abolish Gift Duty. At this stage it is unknown what effect this will have on gifting programmes. Until the new law takes effect, we will continue to administer gifting programmes as normal.

How do Family Trust transactions work?

All Family Trust transactions should be formally documented and signed off by all Trustees.

It is therefore important that you consider carefully who you select as Trustees as they will need to sign off all Family Trust documentation. This may include:

1. Trustee Resolutions

2. Bank documentation regarding any loans drawn or guarantees given by the Trust

3. Agreements for Sale & Purchase of Property or Businesses

We keep in contact with your accountant throughout the transaction (if you have one) and also lodge the required documentation with the Inland Revenue.

It is therefore crucial that you keep your Family Trust solicitor informed of all Family Trust transactions so we have the complete picture when corresponding with these other parties.

I would like a Family Trust – What should I do?

Telephone our office and arrange to meet with one of our Family Trust lawyers to discuss your needs, the purpose for the Family Trust and how you would like it structured.

To enjoy some of the asset protection benefits of a Family Trust, there are some timeframes that you must be within.

For example, you cannot transfer your home to a Family Trust immediately upon finding you need rest home care, without running the risk of WINZ ruling the transfer as an attempt to deprive yourself of assets. The earlier the transfer occurs and gifting is completed, the reduced risk that WINZ will intervene and question the intent.

Please feel welcome to discuss the possibility of a Family Trust with your solicitor. They can advise you on the effectiveness of a Family Trust depending on your individual circumstances and position in life.

We would be happy to meet with you and discuss this.

I have a Family Trust – What should I be aware of?

Although by no means an exhaustive list, the following are some key things to bear in mind once you have a Trust in place:

Family Trust Money:

- The money in the Family Trust bank account is not "yours", it is the Trustees. When you withdraw that money it is a Distribution from the Trust and should be documented accordingly.

- Tell your Family Trust solicitor when you use Family Trust money. They can help you manage the account and keep it simple.

Family Trust Expenses:

- If you transfer your home to the Family Trust, all the costs of maintaining and improving that asset are correctly Family Trust expenses.

- Therefore, open a Family Trust bank account and use this to pay these expenses.

- Keep a detailed record of these expenses. They can be included as a further debt owed by the Trust to you and gifted away. Contact your Family Trust solicitor to discuss this in more detail.

Accountancy Issues:

- If your Family Trust simply holds the family home, it is unlikely you will require much accountancy input.

- However, depending on the extent of assets held by your Trust, you may need regular input from an accountant and may need annual financial statements prepared.

- Please let us know if you would like the details of accountancy firms known to and trusted by Pier Law.

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