

THE TROUBLE WITH TRUSTS

Think about Smart Lawyers ready to attack your Trust. A well-drawn Trust or Trusts will protect what is important to you – but:

1. **Documentation** must be done correctly. If correct documentation for loans, debt or simply recording at least annually the minutes for a Trustee meeting, you may well have no protection at all.
2. **Incomplete or Incorrect Gifting**
Gift duty is no longer payable for gifts made after 1 October 2011. Consequently the earlier \$27,000 pa duty free gift limit no longer applies.

However, it may not necessarily be the case that gifting everything at once is best for your specific circumstances.

Matters that should be considered re this aspect are

- The Ministry of Developments residential care subsidy
- Creditors' Claims
- Who is gift being made to – the Income Tax accrued rules.
- Retaining control of your Trust
- Bequests under our Will
- Look through companies

3. **No Separate Bank Account for the Trust**

A bank account meets two legal duties:

- a) Separates money belonging to the Trust from personal/business finances.
- b) Trust transactions readily identifiable for compilation of annual accounts.

4. **No Financial Accounts for the Trust**

The IRD places a duty on Trustees to prepare financial statements and file tax returns if the Trust earns income. Trustees may have to prepare and file GST returns.

In event of no Trust income, brief Financial Statements should be prepared.

It is important that these are correctly prepared financial accounts – usually an Accountant or Professional familiar with Trusts. Failure here could invalidate the very reasons you have set up a Trust.

5. **No Trustee Resolutions.**
6. **Not having a Professional Trustee.**
7. **Lack of an Annual Trust Review**
8. **A defective or non-existent Estate Plan**
9. **Not Integrating Tax and Legal Structures**

Effective Asset planning requires that your Lawyer and Accountant are on the same page. Both may have different concerns around a Trust when it comes to asset protection and tax efficiency.

Free Guides available from ResRei:

- *A Guide to Trustee Duties*
- *A Guide to Trust Management*
- *A Guide to Wealth Protection Planning*
- *A Guide to a Trust Warrant of Fitness*
- *10 Things to consider in your estate plan*
- *Estate Planning Checklist*
- *What does good trust management involve?*
- *Testamentary Discretionary Trusts*

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An integrated approach can effectively address the issues both may have. Separating these advice issues can create unintended or unforeseen danger.

Our role is to be instrumental in that integration.

This is an abbreviation of the issues. Full notes are available on request. However we recommend you discuss your position with us, as every situation is different. We have a team approach to provide the right solutions for you. Ask us to arrange a Warrant of Fitness check on your Trust.