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Family Trusts – What Are They Really All About

This month we are devoting virtually our entire newsletter to Family Trusts. The reason we are doing this is that we firmly believe that a properly set up and administered Family Trust is **one of the best estate planning tools available today.**

Furthermore, a Family Trust is a long term investment in your future and it is important to understand that if you haven't got one when you need one – its way too late.

What also concerns us is the number of people we come across on a daily basis that have Trusts but don't really understand what they are all about.

Sometimes Trusts have been set up and then the clients are left virtually 'abandoned' by their advisors.

In one notable case a client went to a Trust advisor and asked to have a Family Trust set up to protect her assets in the long term. The Trust was set up exactly as asked. No assets were transferred into it at any stage and when the client came to us she stated that she already had a Trust and was confident that that

would suffice. When it was pointed out to her that her Trust wasn't worth the paper it was written on, she demanded answers of her advisor, who replied **'at that price what did you expect?'**

This emphatically highlights one of the fundamental problems in setting up Trusts. Clients somehow seem to think that once the initial documents are signed then they can simply walk away and forget about it. And we have many examples of Trust advisors who are also too happy to let this happen, although thankfully these are well offset by some outstanding experts in this field amongst our professional colleagues.

The real problem with a poorly administered Trust is that it can be compared to an insurance policy. We happily pay insurance all our lives but **don't usually really understand the intricacies of our policies until the house burns down.** Then we learn very rapidly the impact of underinsurance or failure to provide the necessary detail.

Although we have been in the business of Trusts for some time,

2 years ago we developed a Trust Model which incorporated all the legal, accounting and administration aspects to create the profile of the 'ideal' Trust.

This included checks and balances to ensure that profile could be maintained for the lifetime of the Trust and procedures to ensure the standards of our corporate Trusteeship are maintained well after we as individuals have departed the scene.

This model has been scrutinised by one of the leading Trust advisory firms in Australasia to the extent that it is now being considered for adoption by them as the standard work on Trust administration.

In this newsletter we are highlighting various aspects of Trust administration that we feel everyone should be aware of.

Furthermore, we invite you to attend one of our 40 minute Trust presentations entitled **'Family Trusts – The Things You Have To Know'** *completely free of charge*, whether you are a client or not. For more details of this offer please contact Pete Hill.

The YBT Trust Service

When looking at Trusts, many people only have one question – ‘How much does it cost?’ This is a mistake. The question should really be ‘What am I getting?’ as the ongoing and future efficacy of your Trust is far more important than the cost of the initial setup. The issue is always time. A Trust’s effectiveness as an estate planning tool does not normally become evident until a minimum of 5 years have passed and in most cases a much longer period of time before it reaches its full value. For this reason you have to be sure that what you do now is interpreted in exactly the same light in the future. For this reason one of the cornerstone policies of our Trust Model is:

“The recording of transactions is of such a manner that the intentions of the moment will be equally transparent and robust when scrutinised in the future”

Why this is so important is that the very nature of Trusts is to protect lifetime assets well into the future. You can be pretty sure that when the time comes to rely on the Trust the first point of attack from any predatory creditor will be the structure and administration of the Trust itself. If you can crack that, for example by having it declared a ‘sham’ Trust then all the assets so carefully protected within the Trust may be exposed.

Some of the other key points of our Trust Service are:

Trusteeship Our Trustee Company (Clarke Crow & Company Nominees Ltd) takes on Trusteeship of all the Trusts formed by us. This means that we stand by our Trusts and can guarantee unbroken Trusteeship for the foreseeable future and beyond. Our policy in this regard is *“The role of independent & professional Trusteeship is undertaken under clear conditions that are fully understood and adhered to by all stakeholders”*

Formation Our policy here states: *The process of advising, forming and administering Family Trusts is consistent with the highest standards of accountability, professionalism and integrity that could reasonably be expected to be achieved”* We never profess to knowing everything, however and we have legal consultants to assist us (at no cost to the client) in clarifying various points as and when they arise.

Fiduciary Responsibility Your Trusts are our Trusts as we are your fellow Trustees. This means that we must administer the Trust as if the beneficiaries were our own family. In this respect therefore we have policies and procedures to ensure our *fiduciary* responsibilities are constantly monitored and maintained. We define *fiduciary* as: *“one in a position of authority who obligates himself or herself to act on behalf of another (ie as in managing money or property) and assumes a duty to acting in good faith and with care, candour and loyalty in fulfilling the obligation”*

Some of the systems we have in place to discharge our duties in this regard are:

- Our free Trust presentation which ensures that all stakeholders have a clear understanding of Trust fundamentals
- Independent monitoring of Trust accounts by the Trust Manager
- Complete review of each Trust file annually, irrespective of whether or not accounts have been produced
- Ability of clients to contact the Trust Manager directly
- Clear policies in respect of the responsibilities of each person involved in your Trust, in the form of a written contract
- Plain language summaries of the major events in your Trust and their effect

Quote of the Month

‘Those who trust to chance must abide by the results of chance’
Calvin Coolidge (1872 - 1933)

The Family Trust Structure

A Family Trust is comprised of 3 parties: The **Settlor**, The **Trustees** and the **Beneficiaries**.

The **Settlor** (there can be more than one) sets the Trust up, names the Trustees and the Beneficiaries and gives the Trustees the initial Trust fund (usually \$10.00). The Settlor is also usually (but not always) the person or persons who wish their assets to be owned by the Trust.

The **Trustees** administer the Trust assets on behalf of the beneficiaries. They have wide powers as to their method of doing this, but must at all times ensure that their actions are transparently in the best interests of the beneficiaries.

The **Beneficiaries** are the only people entitled to benefit from the Trust. In a family situation these will normally be husband, wife and children.

It is not unusual for the same person (or persons) to be Settlor, Trustee and Beneficiary, provided there are other provisions in place, ie an independent Trustee as well as additional beneficiaries etc.

One little known fact about Family Trusts is that they are not publicly registered. This is because they are not an entity within themselves, such as a company, but rather a collection of complex relationships, each legally binding in its own right. For this reason there are no naming restrictions.

A common sequence of events when a Trust is initially formed is that the Settlers (in family situation) sell their major assets - say house, company shares and investments to the Trust at current market value. They also make a loan to the Trustees to enable them to purchase those assets, which are then fully transferred to the Trust, in the joint names of the Trustees.

The Settlers then progressively forgive repayment of the loan at the rate of \$27,000 each per annum until the loan is fully discharged. For more detailed information on how this works follow this link to our website:

http://www.ybt.co.nz/index.cfm/new_article/family_trusts_and_gifting.html

or simply go to our website and click on 'Article Archive' then choose 'Family Trusts and Gifting'

We're In This Together

When forming a Trust it happens all too often that the clients use the 'file & forget' policy and leave it to the professional Trustee to effectively 'run' the Trust from there on. Our Trust Service policy insists that our fellow Trustees are to have a working knowledge of Trust fundamentals to the level that enables them to fully understand the impact of each decision.

There is no such thing, in our opinion, as 'routine' events in a Trust. To this end you can ring us directly anytime to discuss Trust issues. Any documents sent to you will be accompanied with clear plain language explanations – you are left in no doubt as to what you are signing.

When all documentation has been completed and filed, we also provide you with a 'living' folder that contains copies of all your important documents. As your Trust evolves we continue to update this file so that at any time you have the latest information at your fingertips.

We treat the term 'Fellow Trustees' very seriously. We are partners in the duty of administering Trust assets on behalf of the beneficiaries and as such it is our duty to work with you on an equal basis to ensure the Trust is always in exactly the right form to deliver its ultimate objectives.

**For more information on any of the products, services or issues raised in this Newsletter, visit our Website
WWW.YBT.CO.NZ**

More Trust Information

We are continually updating our website with Trust information, through articles and newsletters. To obtain more detailed information on the issues contained in this newsletter, simply go to our home page www.ybt.co.nz and click on 'Trusts and Succession Planning' for items such as 'Benefits of a Family Trust' 'Who needs a Family Trust?' and 'Other things you should know about Trusts'.

In our article archive you will find the following specific articles on Trusts:
http://www.ybt.co.nz/index.cfm/Article_Archive (follow this link to connect)

[Trade Me and Family Trusts](#)

[Residential Rest Care Subsidies](#)

[Family Trusts and Gifting](#)

For those not reading this electronically, simply go to our home page and select 'Article Archives'. You will find the above articles listed under the **Family Trusts** heading.

The best idea, however, is to simply give us a ring and come along to our free presentation. It may be the best investment you have made this year.

If you would like to contact us on any of the matters raised in this newsletter or to discuss any aspect of your business please feel free to call us any time on (03) 479 3890, email info@ybt.co.nz, write to us at PO Box 816 Dunedin, contact any of our team below directly , or visit our Website at www.ybt.co.nz



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