

## Family Trust information pack

### Simple answers to commonly asked Trust questions

#### Introduction

Protection of your assets is an important matter. This information pack is designed to give you some brief information on Family Trusts. There are also a number of other issues which we will raise with you if you choose to proceed to set up a Trust. We will ask you to think carefully about the future, about your family, and about what you intend for yourself and those who are important to you.

We do not want you to focus only on Family Trusts. They are not a magic answer to the question of how to protect your assets for the future. If they are properly incorporated into a plan for the future they can be extraordinarily effective but they are not for everyone.

Please take some time to answer the questions in the short questionnaire attached to this information pack and send it back to us.

This will be very helpful to us before our first meeting.

#### What are the benefits of having a Trust?

- Some of the benefits of having a Trust include...
- providing for your family and protecting assets for the future
- reducing the chance of relationship property claims by future partners of Beneficiaries
- protecting assets against unexpected business debts
- establishing a cheaper and more efficient method of administering your estate once you are deceased
- creating a protective framework for a beneficiary who is disabled or unable to fully function
- preventing unwelcome claims on your estate
- maintaining confidentiality about your financial affairs
- preparing for the time you might need residential care
- structuring your affairs effectively for tax
- preparing for possible capital gains or death taxes
- protecting against professional liability claims.

### **Do you want more say over what happens?**

Family Trusts can help you have more of a say in how your assets are managed, even after your death. When you establish the Trust you can set conditions around the use or disposal of assets, including giving someone use of the income but not the capital. For instance you could ensure a family farm is not split up, or that there are controls for someone who is not good with money. A Trust is also much harder to challenge than a Will, should you want to exclude someone, control what happens to assets or reduce the chance of unwelcome claims.

If you have a Trust, and the bulk of your assets are held in the Trust then, provided that appropriate preparation is in place, the administration of your estate will be much simpler. It will also be harder for a disgruntled beneficiary to challenge.

## **Why you may need to take steps to protect your home and other assets**

It doesn't matter how well your will is written, or how much thought and planning has gone into a Relationship Property Agreement or how well your business is structured and functioning; whatever you own can still be legally taken from you!

You may have worked hard for many years and have managed to accumulate considerable assets. You expect that when you retire your savings will be there to look after you and to pass on to your children when you die. Did you know that despite your hard work and preparations it could all be at risk?

### **Consider these following examples . . .**

#### **Story 1**

A middle aged couple worked hard all their lives and built up a substantial freehold family home, some life insurance and several investments. The husband became ill and needed long term rest-home care. Many of the assets needed to be sold to pay for the care.

Even though the rules have been relaxed the Government can use asset testing to recover from your assets.

With the abolition of Gift Duty there have been changes to the way that assets can be transferred to a Trust. However the Ministry of Social Development's approach allows the Government to asset test, and in some situations, to bring back into calculation assets transferred to a Trust. It is important to structure these things very carefully. A Trust is still appropriate as a means to reduce the impact of Government's asset testing regime, although it may not work for everyone.

#### **Story 2**

A younger couple had accumulated a large home, two nice cars and a recreational boat. The husband dies and in his will he leaves everything to the wife. Some time later she re-marries. This marriage doesn't work out but it does last 3 years. The new husband who had not brought many assets of his own to the marriage is now entitled to claim 50% of most of the relationship property. De-facto relationships are also included in this scenario.

The Property (Relationships) Act can have major and sometimes devastating implications on ownership and division of assets.

### Story 3

A couple started their own business. They knew that if things went wrong their family home and assets could be at risk. They decided to form a limited liability company for the business to keep their business and personal activities separate. They believed this would protect their personal assets in the event of business problems. In most cases that would be correct.

However, they were unknowingly operating their business in ways which exposed them to personal liability as Directors. (In our experience Company Directors often do this without being aware of the issues). Even though they had a limited liability company, if they were personally liable their personal assets would not be protected. Things sadly went wrong with their business and they lost the family home in order to pay the company debts.

Creditors are able to use company law to make claims against their personal assets.

These situations are generalisations, but they do paint a reasonably accurate picture of how you could unknowingly be putting your home and assets at risk. We have seen first hand some of the above scenarios.

## Believe the best, prepare for the worst Is Protection Really Necessary?

You may be telling yourself that these examples are extreme and not likely to happen to you. You may even be wondering if any protection at all is necessary. Let me assure you that we as lawyers have encountered such situations. You may also believe that the Courts and Government will act fairly or won't your will sort everything out? The Courts and Government agencies may act fairly in **the eyes of the law**, but people are not always treated **equally or fairly**. A will also may not protect an estate from relationship property claims as a result of changes to the Property (Relationships) Act 1976.

Let's look at another story:

### Story 4

Mark and Ruth have been married for a long time. They have four children. One of their daughters is in a rocky relationship which is not likely to last. They have several grandchildren they would like to make provision for. They are also mindful that they would like to prepare their estate for their eventual passing and to ensure that the survivor of the two of them, and their children have no major difficulties in accessing the assets of their respective estates. To this end, acting on advice many years ago they established a Trust. The Trust holds all of their assets except that each of them has a small account with approximately \$8,000.00 each in it. This is money that each consider as their respective "spending money". They ensure that these accounts are managed in such a way that the accounts always stay below the statutory minimum which requires a Grant of Probate (\$15,000.00 at present). Ruth dies. Mark is able to take steps to close Ruth's bank account and the assets continue to be administered in the Trust with no change. When Mark ultimately dies the executor of his estate is able to close his remaining account without obtaining a Grant of Probate and the Trustees of the Trust can administer the Trust for the benefit of the children and grandchildren. The daughter who is in a difficult relationship can benefit from the Trust without raising issues under the Property Relationships Act.

### Here's how our system works

Let's take a couple, called John and Mary. They are ordinary people, but for one reason or another they haven't been employed for a lot of time. As they get older they spend more and more time receiving a benefit of some kind. They are senior citizens now, their health is failing and they now both need full time rest-home care.

Due to their circumstances they don't have enough money to pay for their care. Who is going to pay?

### **The Government will**

It is going to cost each of them approximately \$1,000.00 every week for their care. John and Mary don't have any savings, and no family home that they can sell to help pay the costs. Unfortunately their family are in a similar position and can't help out either. So the Government pays the care costs each week. (In reality we all pay – we are all taxed in order to provide this kind of care for our aging population.)

Let's take another couple, Jack and Jill. They have worked hard, paid a lot of tax and they have accumulated a nice freehold family home with nice things in it, they have a car each and a caravan to holiday in. They paid for their children to be educated through university and have helped put their grand-children through university as well.

Time has passed and Jack and Jill are now frail and elderly, they also need full time rest home care. Who will pay for it?

### **They may have to!**

Although the Government has relaxed the rules since mid 2005 they or their estate will likely lose much of the value of their home and assets to pay for their care. In some ways it sounds fair, doesn't it? They are the ones receiving the care so they should be the ones paying for it.

The purpose here is to illustrate the inequalities in the law. It is not to apportion blame or fault to any individuals.

We have two couples, one who is unable or unwilling to provide for themselves through life and another who worked very hard providing for themselves and paying for the education and upbringing of their children.

The first couple have no assets and are looked after by the Government when they become frail and elderly.

The second couple could lose a lot of what they worked for in order to pay for their care. In effect they are penalised for being self-sufficient and taking care of their own financial needs throughout their lives. They have provided for themselves while healthy, and now the Government says they must provide for themselves while ill.

### **Is this fair?**

Over the years Jack and Jill have paid large sums of money in taxation. The Government has had no difficulty in spending this money on the care of others less fortunate than they. But now that Jack and Jill need care they are told that all they worked for will be sold to pay for this care and their children may receive no inheritance.

This is a very simplified example but it does illustrate the inequitable treatment that the law allows, while still being "fair" and "equitable".

The law does provide a way to avoid this inequality. There is a legal way in which you can reduce the likelihood of being assessed to provide for your own care. There are changes which have been made recently, and we would point out that caution is needed. At the same time Family Trusts still offer a good way of planning for this eventuality, provided you start sooner rather than later.

There is a straightforward legal tool that will minimise the chance of you losing what assets you already have, and what you may accumulate in the future: **a Family Trust**.

A Trust in conjunction with a clear asset protection plan also helps you to separate your personal and

business activities. And to protect your assets in case of matrimonial or relationship problems. It will also help you to hold on to your hard earned assets so that your later years aren't spent in poverty.

Why would you allow the Government and others (creditors, ex-spouses, children, or their partners) to take what you have worked for if you don't have to?

### **What are the drawbacks?**

Family Trusts are complex to set up and they are initially reasonably expensive, especially when they are incorporated into an asset protection plan.

But you could consider the set up costs like a one off insurance premium. We all pay large amounts of insurance premiums each year. The initial cost of setting up a Trust and transferring your assets is a one off cost which is usually less than what the Government will take in three or four weeks if a person has to pay for their own care. And the Government (or others) continue to take until you can lose much of what you own. It's cost is minimal if you are facing Court proceedings, or relationship property claims and are likely to lose.

Family Trusts also make the administration of your affairs a bit more complicated. This can be easily minimised by good structuring and education at the outset.

Family Trusts may be set up for some of the following reasons:-

- Creditor protection (especially if you are self employed).
- Effective passing on of your estate.
- Income splitting.
- Estate planning.
- Wealth creation.
- Surcharge planning.

### **Why have a Family Trust?**

A properly administered Family Trust as part of a plan can be used quite legally to protect and preserve your assets. It may also have some taxation advantages.

To understand the purpose of a Family Trust we need to look at the areas in which a Trust can provide benefits.

#### **1. Asset Protection**

##### **Do you have any assets and do you want to keep them?**

If you are self employed or in business you run a significant number of commercial and personal risks. This is true even if you run your business under a "limited liability company". The Government is looking at more and more ways to place personal responsibility on company owners and Directors in areas such as OSH and employment. Your only reliable protection is to place your personal assets in a Trust.

A Trust provides much better protection for your assets than owning them personally. We cannot stress this highly enough.

## 2. Estate Planning

If you have a properly set up Family Trust and managed assets, then your estate can be very easily administered without needing a Grant of Probate, saving considerable amounts of time and a large amount of money in legal and other costs.

## 3. Personal Reasons

A Trust can be used to keep the family assets strictly within that family. This means that the spouses or de facto partners of your children will have no claim to assets you created and handed on to your children. You can also have greater control over those assets than if they were simply passed on to your children under your will.

A Trust can provide a safe method of distributing your estate with ease. It can also provide a safe place for your beneficiaries' inheritances to be placed. It can protect assets from claims under the Property (Relationships) Act. Unlike a company a Trust is not registered anywhere and very few people will have access to the details. This feature is attractive to those wanting their activities kept reasonably confidential.

## 4. Especially for single people

For a person who is not presently in a relationship a Trust is an effective tool for those wanting to keep their current and future assets separate from entanglement with future personal relationships. Any assets currently held can be protected within a trust structure. If in the future you enter into a personal relationship, you still have the option of creating another Trust for your relationship assets. In this way you are still able to have a 'partnership' for the creation of future assets. At the same time assets before you start a relationship are not exposed to any claim by your new partner.

## 5. Asset Testing

We are all getting older and in the future may need long term rest-home care, or something similar. The Government provides some subsidies for this care based on your income and assets. The fewer you have the more the Government will pay.

The process of testing your assets to set the level of any subsidy you may get separates this 'benefit' from most others. The Government has changed the rules around asset testing. However you do need to be aware that the thresholds for asset testing are actually relatively modest (climbing by \$10,000.00 a year to be capped at a maximum of \$350,000.00 as a couple's maximum allowable assets). It is also inevitable that the Government may ultimately review the position and look at other means of accessing individual's personal assets, or of changing the rules around the level of assets which are exempt to ensure that it receives more reimbursement for its social services. The Government is gradually phasing out asset testing in its present form but it is inevitable that some form of user pays will replace it in view of our rapidly aging population.

By placing your assets (timing is critical) (and carrying out an appropriately managed asset transfer process to the Trust, which complies with MSD rules) then those assets transferred to the Trust will eventually be out of reach of asset testing. If the Trust owns them, you do not. They are not 'your asset' and you can increase the chances of qualifying for subsidies without having to pay your savings in rest-home costs. Similarly, you may also avoid other surcharges if some of your investment income is channelled through your Trust.

There are changes to the way asset testing will be administered as a result of the abolition of Gift Duty. These changes only highlight the need to be more proactive in setting up appropriate Trust and asset protection arrangements earlier rather than later. **We cannot stress this highly enough.**

## 6. Taxation

Estate Duty or Inheritance Tax does not apply at present but it may well be re-introduced in the future, so it would be wise to protect yourself now. Trusts have been a useful way of avoiding estate duty in the past. There are no guarantees that Trusts will do so in the future, but they are the most likely structure to provide future protection.

## 7. Income Splitting

Trusts allow for some income splitting. If you run a business through a Trust the Trustees may be able to distribute the income to several members of your family, rather than simply to the person who carried out the work. By using a Trust it is possible in some circumstances to take advantage of a beneficiary's lower tax rate. This is a complex area, so you will need to get tax advice on your specific circumstances.

8. The Abolition of Gift Duty which came into effect from 1 October 2011 has not affected the way Ministry of Social Development administers asset testing. The limits, before the Ministry determines "excess gifting", are for a couple, \$27,000.00 between them (\$13,500.00 each) and, if you are an individual, then the limit also remains at \$27,000.00 in total gifting for any one year. The changes only highlight the need to be more pro-active in setting up an appropriate Trust as early as possible. You are able to fully gift the value of the property transferred to the Trust in the first year of establishment. You cannot do this if one of the main reasons for setting up the Trust is to avoid or minimise the impact of the asset testing regime by the Ministry of Social Development. Careful advice is needed. At the same time, please do not think that this is a reason why you should not set up a Trust. It is simply a matter of going into the Trust with your "eyes open" and having a full assessment of your situation done.

There are other advantages of establishing a Family Trust and we have only touched briefly on a few of them.

By knowing what you want to achieve through setting up a Trust, and by obeying trust law, the entire process can be simplified and complications minimised.

## How does it work?

You have to first decide what assets you want to put into the Trust and who will control it.

A Trust is established by a written document (Deed) which is signed by the settlers (person or people setting up the Trust), and the Trustee (person or people who administer the Trust). A nominal amount of \$10.00 is given to the Trustees by the settlors.

Other assets must be sold at their market value to the Trust. We will work with you to structure how this should be done.

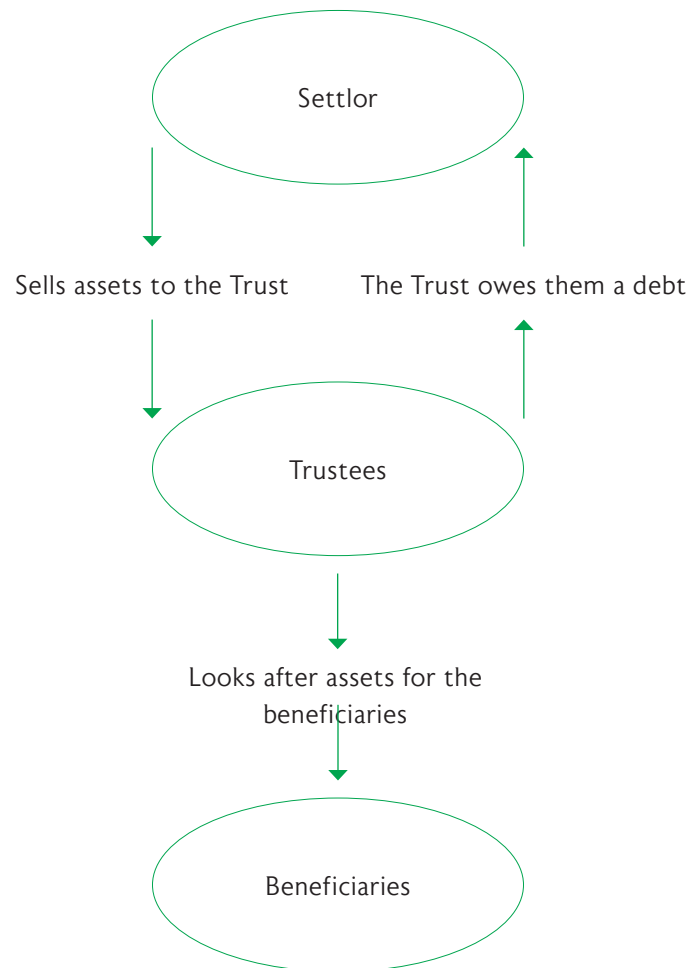
### What can I put into my Family Trust?

Anything you like, including any, or all, of the following:

Family home	Investments	Savings	Boat	Inheritances
Cars	Business Interest	Personal Chattels	Insurances	
Holiday Home	Collectibles	Caravan	Share Portfolio	

As a general rule you should only put into a Trust assets which may increase in value over time. However you should carefully consider putting all your major assets into Trust to get the full benefit of the asset protection afforded by your Trust.

### The process looks like this:



### The Settlor

The person setting up or forming the Family Trust is called the Settlor. This is normally those who own the property that will be transferred into the Trust. It is the Settlor who sets out in the Trust Deed who will be responsible for the property (Trustees) and who will be eligible to receive any benefit for the Trust (Beneficiaries).

You can be a Settlor, a Trustee and a Beneficiary. Each Trust is individual and the roles of the parties will be outlined in your Family Trust Deed. The Settlor usually keeps the power to appoint and remove Trustees.



## **Family Trust Deed**

The Trust Deed is a legal document which outlines the rules for the running of the Family Trust. Its terms may be amended to provide for individuality and flexibility within each Family Trust.

You decide (in consultation with your Trust advisor) what it is you want to achieve by establishing a Family Trust, and who you want as Trustees and Beneficiaries. The Family Trust Deed records this.

The Deed will also record the Trustees' powers which are usually broad enough to ensure they can look after the Trust's assets the way you would manage them. The Deed needs to allow for the Trustees to make alterations and it is important to maintain flexibility in case of future changes to the law or to your wishes.

Most Family Trust Deeds are established as discretionary trusts. This means that the Trustees decide at their discretion who will receive benefit from the Trust, for how long, and when. Beneficiaries cannot demand that the Trustees pay them anything. Legally they only have a right to be considered by the Trustees.

Alternatively, the Trust Deed can provide for fixed shares for specific beneficiaries and sometimes people leave directions for them to happen on their death.

## **Trustees**

The Trustees are the people who control the assets of the Family Trust. As Trustees of the Family Trust they have legal title to the property, but they are also legally obliged to act in the interests of all the beneficiaries.

The Trustees are responsible for making sure that the Family Trust Deed and your wishes as Settlor are followed. This is one reason why most Family Trusts have the Settlor(s) appointed as a Trustee(s). You then have a significant control over your own Family Trust, but you will have to consult with other Trustees appointed, and act unanimously.

You may decide that you and your spouse will be the only Trustees of your Family Trust. Or you can if you wish appoint one or more independent trustee. Each decision requires thought and care as you are placing your assets in the control of someone else. The independent trustee may be someone you know or they may be a lawyer, accountant or someone who specialises in the area of Trusts. Or you may decide to have several trustees, maybe you, your spouse and an independent person.

It is worthwhile to consider the benefit of having an independent professional trustee. By appointing a competent professional as a Trustee you can increase the chances that the Trustees comply with the Trust Deed and with the law.

On a more practical level an Independent Trustee needs to be at least as available as the other Trustees. All Trustees must be consulted before any decisions are made. They also need to sign minutes recording Trustees' decisions. There must be no evidence of 'rubber stamping' of decisions once they have been made as this can place the credibility of your Trust in doubt.

You also need to consider the charges that a Professional Trustee may make. These will vary depending on the amount of property and level of transactions involved.

Opinions do differ on the benefits of having Independent Trustees. We must point out that there is no legal requirement that you must have Independent or Professional Trustees at the present time. But we now recommend that all Trusts have an independent Trustee.

In practical terms all the Trustees of the Family Trust must be consulted before making any decisions in regard to the Trust. For example, if you were purchasing an investment property for the Trust, each Trustee must be consulted before any decisions are made and must also all sign the paperwork. This can create some practical problems.

### **All Trustees must take part in all decisions.**

There is a lot of flexibility in how you appoint your Trustees. You may need to appoint further Trustees to carry out your wishes after your death, or the death of the survivor of you. This will be done in your new Will which we will complete at the time we set up the Trust.

There is no specified number of Trustees that the Trust must have. We advise against having a sole trustee, and against Trusts with four or more Trustees.

### **Beneficiaries**

The Beneficiaries are the people who you wish to benefit from the assets of the Family Trust. Tax exempt charities are also allowed to be beneficiaries as are companies and superannuation funds. However it needs to be clear for IRD purposes that the primary beneficiaries are related to the Settlor by natural love and affection.

At the establishment of the Trust the Settlor elects who she/he wishes to benefit from the Trust. Beneficiaries named at this point are usually the spouse, close blood relatives and close friends, in other words people for whom the Settlor has natural love and affection.

You do need to think carefully about including spouses of children and de facto partners. We recommend against this but are happy to discuss your requirements.

The Trust Deed may allow for more beneficiaries to be added later. A Trust normally provides that a newly born grandchild automatically becomes a Beneficiary.

The intention is to provide Trustees with the maximum flexibility in deciding who should benefit from the Trust. However the Beneficiaries have limited rights to force the Trustees to make payments to them. All benefits are normally at the discretion of the Trustees.

### **Annual meeting of Trustees**

The Trustees should meet or record in writing each year to...

- review investments and investment policy
- approve accounts (and any tax returns required)
- confirm any arrangement you have to live in your home
- consider beneficiaries and decide on any distributions.

### **Keeping records**

All decisions should be recorded in a written resolution signed by all the Trustees. A folder should be kept with all the resolutions, accounts, and balance sheets in it. Accurate records of payments to beneficiaries and forgiveness of debt must be kept for the life, of the Trust.

### **Accounts and tax work**

The Law Connection Limited can make payments, collect income, maintain records, organise accounts and tax returns and handle the administration. The fees can be charged to the Trust. Or you may want your accountant to do some or all of the work. If you want to do it yourself the Trust can open a bank account that Trustees can operate – you will still need to prepare annual accounts and have them approved by your Trustees.

## Some Advantages you will gain by having your own well organised Family Trust

Peace of mind	<ul style="list-style-type: none"><li>• Your assets are safe!</li></ul>
Control	<ul style="list-style-type: none"><li>• As a Trustee you have considerable control.</li><li>• You decide who the Trustees are and can remove them if you wish and appoint new ones.</li><li>• You decide who benefits and when.</li></ul>
Flexibility	<ul style="list-style-type: none"><li>• You can change things in the future.</li><li>• You can place conditions on benefits.</li><li>• You can adapt the Trust if legislation changes.</li></ul>
Freedom	<ul style="list-style-type: none"><li>• You no longer own the assets and do not have to declare them as yours.</li><li>• You will not be personally taxed on things you don't own.</li><li>• You are less likely to be asset tested on Trust property.</li><li>• You are less likely to be income tested on income from Trust owned assets.</li></ul>
Safety	<ul style="list-style-type: none"><li>• Non beneficiary spouses or partners won't have access to Trust assets.</li><li>• Business creditors normally will not have access to the assets.</li><li>• Trust assets have protection from financial difficulties.</li><li>• Insulation from future Relationship Property settlements/claims.</li></ul>

You now have access to an extremely comprehensive estate planning product. One which has been designed to make the operation of a Family Trust simple and user friendly.

### So what do you get?

#### What you will get

- Trust Deed.
- Opening Minutes.
- Sale and Purchase Agreements for properties/assets sold to the Trust.
- Deeds of Acknowledgment of Debt.
- Documentation relating to gifting of assets/releasing of debt or transfer of assets.
- Memorandum of Wishes.
- New Wills.
- Power of Attorney Documents (if requested).

## **1. The Trust Deed**

See description above.

## **2. Opening Trust Minutes**

This contains all necessary resolutions for your Trust's first meeting of Trustees. These resolutions take care of the initial matters and transfer of assets to the Trust.

## **3. Sale and Purchase Agreements for assets sold to the Trust**

Included in our Trust package is the preparation of a Sale and Purchase Agreement for any property to be sold to the Trust.

## **4. Deed of Acknowledgement of Debt**

This is the document that records the value of all assets you have sold (transferred) to the Trust. It acknowledges that the Trust owes a debt to you for those assets. We include the supporting valuations for future reference and IRD purposes.

## **5. Deeds Relating to any Debt or Gifting**

The type of document used here will vary from situation to situation. It could be a Deed of Forgiveness of Debt, an outright gift or several other possibilities. We will discuss this with you.

## **6. A Memorandum of Wishes**

This document records how you wish either present or future Trustees to distribute your assets. It also tells future Trustees how you would like the Trust administered and for whose benefit. It can also identify and provide guidance for any difficult family structures.

The Memorandum of Wishes can be changed by you at any time without professional assistance as long as you make it clear and easily understood. You can change it as often as your wishes change. While the Trustees must have regard to the memorandum of wishes they are not normally bound by it. We recommend that you complete one.

## **7. New Wills**

Your Will determines how you want the assets held outside of your Trust distributed. This document contains provision for you to distribute heirloom type items (Granddad's watch or Mother's wedding ring). It generally also serves to ensure that any assets not yet transferred to the Family Trust are bequeathed either to the surviving spouse and then to the Family Trust. This allows management of all your assets within one entity and provides for a much greater degree of flexibility. The exact terms will have to be discussed with you at our first meeting.

## **8. Enduring Powers of Attorney for Property and Welfare**

With these you give the legal authority to someone else to manage your affairs if you become mentally incapacitated due to age or illness or accident. Ideally the nominated attorney should also be a Trustee of your Trust.

Two documents are prepared for each settlor, one for your property, and one relating to your personal welfare. You can revoke these powers of attorney at any time, as long as you are mentally capable.

## What to do next

If you wish to set up a Trust, or have a no obligation discussion at a standard consultation fee of \$300.00 plus GST (which costs will be waived should you decide to proceed), please complete and return the attached questionnaire by mail to The Law Connection, PO Box 2079, Raumati Beach or email [thefirm@lawconnect.co.nz](mailto:thefirm@lawconnect.co.nz) or fax to (04) 299 7686.

**IMPORTANT DISCLAIMER:** This document only provides a summary of the law surrounding Trusts in New Zealand. It is not intended to be comprehensive or to replace legal and accounting advice. Do not act in reliance on any statement without first obtaining specific professional advice. We expressly disclaim liability and responsibility to any reader of this brochure for the results of any actions taken on the basis of the information contained in this brochure.

## Frequently asked questions

### Q. Can we still sell our home and buy another one?

Yes. If the home no longer meets your needs, the Trust can sell it and buy another one to suit you but you need to arrange this with the Trustees beforehand and they must keep a record of the decision. The Trustees will need to sign the legal papers involved.

### Q. Can we still borrow money against the house?

Yes. The Trust may be able to borrow the money using the assets as a security or you may be able to borrow the money yourself with a guarantee from the Trustees, which is backed by the Trust's assets. It depends on the situation and on your lender. We can discuss this with you.

### Q. Can we still buy an investment property?

Yes. The Trust may decide to borrow the money and buy the property itself or it may be able to give you a loan or a guarantee so you can buy the property in your own name.

### Q. What happens if I disagree with a Trustee?

We will set your Trust up so you are the Appointor, which means you can remove a Trustee and appoint a new one if you can't reach agreement but if you do this too often, your Trust could be considered a sham.

### Q. We have a holiday home we want generations of our family to enjoy, how can we ensure it's not sold?

Putting it in a Trust with conditions around it will protect it for the future but you may not want to have too many conditions in case it needs to be sold for a good reason. For instance if you or one of your descendants needs money for a life-saving operation or no one uses the home any more. You can say in your letter of wishes what you'd like to see happen - that way the Trustees can take your wishes into account but still have flexibility if the unexpected happens

### Q. What if we separate?

A properly constituted and run Trust can make this process easier. The Trust Deed can specifically provide for a division of Trust assets in the event of a separation or divorce. You will always need legal assistance any time you separate.

### Q. How can I protect my inheritance?

Any inheritance is separate property, but if it becomes intermingled with other assets it can become relationship property. One way you can help protect your inheritance is to have it paid straight into

a Trust. That way there's no gifting involved. So if you know you are going to get an inheritance you could ask that person to leave the inheritance to your Trust instead of you personally.

**Q. If the Trust owns the home who pays the rates and insurance?**

Usually the arrangement is for you to continue living in the home on condition you keep it in good repair and pay the rates, insurance and maintenance costs. If the Trust has the means it could agree to pay for larger repairs or improvements.

**Q. Can I ask a friend to be my Independent Trustee?**

Yes, but it may not be wise. Many people think it will save money but don't understand the difficulties that can arise. It means your friend would know all the financial details and be involved in all the decisions about the Trust's assets. They can't just rubber stamp

what you want to happen or they could be sued and your Trust could be declared a sham. There's a lot of responsibility and even if your friend has to spend a lot of time on Trust affairs, they can't be paid for their time. It's also hard for a friend to be truly unbiased if a dispute arises - you could be placing them in a very difficult situation.

**Q. Why should I consider having a Professional Trustee?**

A Professional Trustee will help ensure that the Trust is properly managed, that the gifting and other essential paperwork is done each year, and that the Trust's assets are kept separate from your own. This is very important. They will also know if there are any law changes that could affect your Trust. A Professional Trustee also provides continuity if something happens to you and can be relied on to be unbiased.

Generally, having gone to the expense of setting up a Trust, it is worthwhile for most people to consider a Professional Trustee.

We have attached for your information a copy of our August 2011 client newsletter which has some important information regarding the asset transfer and gifting process.

## Preliminary Questionnaire - Family Trusts

Proposed trust name:	
Your full name(s):	
Your full address:	
Phone:	
Email:	
Your occupation(s):	
Your IRD number(s):	
Your proposed Trustees (full names, addresses and occupations)	
Your proposed Beneficiaries (full names, addresses and occupations)	
Please outline briefly the assets to be in the Trust	

What age bracket are you in?	<input type="radio"/> 18 - 40 <input type="radio"/> 41 - 65 <input type="radio"/> 66 - 70 <input type="radio"/> 71 +
What are your present assets and liabilities? (Please list them if you can)	
<b>Assets:</b> (Include houses, savings, shares, insurances, superannuation etc)	<b>Value</b>
1.	\$
2.	\$
3.	\$
4.	\$
5.	\$
6.	\$
7.	\$
8.	\$
9.	\$
10	\$
<b>Liabilities:</b> (Include mortgages, overdraft, business debt etc)	<b>Value</b>
1.	\$
2.	\$
3.	\$
4.	\$
5.	\$
6.	\$
7.	\$
8.	\$
9.	\$
10.	\$



Do you have goals for the balance of your life and for what you would like to see happen after you die? (If so, could you please list them briefly, or come to our first meeting ready to discuss them.)

Are there any family issues which we need to be aware of?  
(Remarriage, sibling rivalries, children from earlier relationships etc)

Do you have a current will?

Where is it?

Do you have Enduring Power of Attorney? ☐ yes ☐ no

If so, who are your Attorneys?

Proposed executors in your Will?

Proposed replacement Trustees?

If you have dependent children proposed  
guardians if both parents do not survive

Please e-mail this to [thefirm@lawconnect.co.nz](mailto:thefirm@lawconnect.co.nz) or fax to The Law Connection: 04 299 7686  
or post to PO Box 2079, Raumati 5255.