Sue Fordyce

BARRISTER & SOLICITOR

FAMILY TRUST GUIDE

WELCOME TO MY GUIDE FOR FAMILY TRUSTS

On the following pages I have collected together information about Family Trusts which I hope you will find both informative and practical.

One thing to remember is this – you can never spend too much time informing yourself about Trusts or the process of forming a Trust – it is never time wasted – knowledge is always a good thing!

As a lawyer, what I want for my clients is that they feel fully informed and in charge of the process of forming a Trust, and that they feel completely confident about what they are doing. This guide is intended to help with that.

But any guide intended for many people to read has its limitations. I cannot possibly write down for you the huge number of different things that I, as your lawyer, would be looking out for and dealing with in relation to formation of your Trust and to protect your interests in your own specific personal situation.

So please use the information in this guide to help you gain general information about the process of forming a Trust but also please come and see me and use that opportunity to tell me something of your particular situation so that I can make sure we work together to look after your interests.

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On the following pages you will find information about the following topics:.

Remember - this is only a guide!

As I said earlier, I cannot possibly hope to write down everything you might need to know about forming a Trust. This is only a beginner's guide to some of the questions you may have about forming a Trust.

The contents of this guide are not legal advice!

But I will be happy to give you personalised legal advice about any of the topics covered in this guide – please contact me in person or by phone to talk to me if you are interested in forming a Trust or even for your more general questions.

WHAT IS A TRUST?

A Trust is a separate legal entity which is set up so that a "Trustee" or "Trustees" own and control assets for the benefit of specified people.

A Trust is completely separate from the people who have created it.

Trusts have been around literally for centuries. They are a legitimate and completely lawful means of ownership of assets. No matter what government is in power or what policies they have, it is very likely Trusts will always be an important and useful tool to use in asset protection and investment and succession planning for individuals and families.

There is no standard type of Trust created by a statute. This makes Trusts very different from both companies and partnerships which are created by, and all their basic features are set out in, the Companies Act 1993 or the Partnership Act 1908.

The Trust deed for each Trust is the document that tells almost the whole story of what kind of a Trust it is, what it can or can't do and how it must do things. Alongside the Trust Deed there are some Acts of Parliament that contain some provisions which govern how Trusts can operate.

The cast of characters for most Trusts are the following people:

→ **The Settlor:** This is the person or people who create the Trust – who start it off.

→ **The Beneficiaries:** These are the people who are intended to receive and enjoy the benefits of the Trust.

→ **The Trustees:** These are the people who agree to have the task and duty of holding the assets that the Settlor or others give the Trust or which grow up in the Trust through capital growth or profits. The Trustees hold these assets "on trust" for the beneficiaries – in other words not for their own personal benefit but on behalf of and for the beneficiaries.

WHY DO PEOPLE HAVE TRUSTS?

There are a number of reasons why you might consider setting up a family Trust and transferring some of your personal assets to it.

Protection from creditors or business failure

If you are self-employed you should seriously consider having a Trust. Even if your business is sound and successful, there is always a risk of something happening, even not directly related to the business, which threatens your business and/or your personal assets.

For instance you may:

- → Take on a new, and possibly risky, business venture.
- → Accept greater responsibilities and potential liabilities by being appointed a director of a company.
- → Agree to give a guarantee for someone else's debt.
- → Become personally liable for some unforeseen and uninsured liability.

Your personal assets will also be at risk if your business fails or runs into difficulties. If assets have been transferred into a Trust well before potential claims have arisen and while your business is in a healthy state, you may be able to preserve those assets against claims against you.

Managing your Estate

All families can have interesting or even difficult dynamics. Not all family relationships are as happy as we would hope. Disputes by disappointed children or other relatives over provisions in Wills are not at all uncommon. If you fully transfer assets to a Trust while you are alive and in a healthy state of mind, then those assets generally cannot be pursued by those who simply feel aggrieved by your decisions. This can be especially comforting if you want to make specific arrangements which protect a second spouse or partner. Also, if you want to make unequal provision for your children, a Trust structure may assist you to do that. By attending to these matters by use of a Trust structure while you are living, you can know that those left behind after you have died are unlikely to have to cope with the expense or stress of claims contesting your Will. It also gives you the option of distributing some of your wealth to heirs before your death, should you wish to do so.

Looking after children with special needs

A Trust is a particularly good way of ensuring that funds are available at all times for any child with special needs, or indeed for any other member of the family who you may feel is vulnerable for any reason. Assets can be put into a Trust for this purpose and so can provide income or other support for that person for the rest of his or her life, if necessary. It can be set up so that the funds go back to other members of the family once special provision for that child is no longer required.

Keeping assets in the family

Many people having built up an asset (such as a farm or a business) over their lifetime, want to ensure that it remains within the family and is not sold or divided into uneconomic portions. This can be achieved by putting the asset into a Trust. For instance, in relation to a farm, the Trustees can arrange for the farming operation to be carried on for the benefit of a number of beneficiaries amongst the family, while at the same time retaining and preserving the principal asset.

Avoiding User Pay Charges

Many people wonder if a longer term advantage of a Trust is that assets in the Trust will not be treated as personal assets if you are being assessed for rest home subsidies or other government benefits. However, the answer to that question will always depend on government policy at any point in time and government policy may change!

As things stand at present if a Trust was established years before a claim for a government benefit and asset transfers were made to the Trust for genuine family or commercial reasons and assets were transferred over a long period of time in modest amounts, then, there is the possibility that the assets in the Trust may be regarded outside any assessment for benefit purposes. The government can, however, go back years when looking at whether a claimant has intentionally deprived him or herself of income or assets in order to qualify for a benefit. Even a long, slow and modest programme of transfer of assets to a Trust does not escape this question of deprivation of assests. Accordingly I do not think anyone should consider the transfer of assets into a Trust as any kind of “magic bullet” which will necessarily be effective to secure assets from claims for costs of care or other forms of asset testing in the future.

It is also most important to realise that if your sole motive in setting up a Trust was to obtain a subsidy or benefit you would not otherwise be entitled to then that transfer of assets to a Trust amounts to a fraud and could be challenged.

Income Tax Planning

Trusts which hold assets which earn income can sometimes provide some scope for income tax planning for families. This might involve a spouse who may be non-income earning, or dependent children or grandchildren. A Trust may have some advantages, for instance, in providing income for education or other funding for children or grandchildren. However, such income tax benefits should only ever be a bonus, not a driver, for setting up a Trust. Tax benefits may come – but they also may go!

Avoiding claims by spouses and de facto parties under the Relationship Property Act

Many people believe that if you have an asset in a Trust it will be completely safe from any claims by a present or future spouse or de facto partner. **This is not by any means the full story**. A Trust is absolutely not a “magic bullet” against claims by spouses be they married or de facto. A person can have a valid claim against a Trust just as they can have claims against a partner. If this is a primary reason motivating you to consider a Trust please come in and talk over your circumstances with me so I can give you comprehensive advice – this is a very complex topic.

Please note: Remember this is a only a guide and not intended to be be legal advice. Please refer to page three for our full disclaimer.

WHAT TYPES OF TRUSTS ARE THERE?

There are four main types of Family Trusts as follows:

Single Trust

This type of Trust is formed by one individual usually with that person and their children (whether there are any yet or not) and grandchildren being intended beneficiaries. Usually the person forming the Trust (the Settlor) is a Trustee of this type of Trust.

Joint Trust

This type of Trust is normally formed by a couple again with themselves, their own children (present or future) and grandchildren as beneficiaries. Both of the Settlors would normally be Trustees of this type of Trust.

Parallel Trust

This is the other main form of Trust used by couples to form family Trusts.

In the case of parallel Trusts, the couple have two Trusts not one. (Note: before you panic! – in my practice this doesn't mean it costs any more to form these types of Trust instead of a joint or a single Trust). One of the chief attractions of this type of Trust structure for many couples is that it preserves and to an extent "enshrines" the assets of the couple that are placed in Trust in 50/50 shares (presuming it is right and fair that the assets intended to be placed into the Trusts should be regarded as being equally shared by the parties). Under the Relationship Property Act 1976 when you transfer assets into a Trust you can be, in a way, removing the assets transferred to the Trust from the protections provided by that Act. In some cases this has caused really difficult situations to arise if a couple separate and cannot agree on how the Trust assets should be treated. So, for many couples, by having a parallel Trust regime they provide a mechanism to enable a separation not to mean insurmountable difficulties for Trusts. It enables the ongoing management of the trusts to be distributed between the parties while still allowing the Trusts themselves to continue to protect assets and provide for family members as they were both intended to. The other reason to consider this type of Trust is that it enables a couple as they get older to split their asset base between them in terms of ownership. As we age, and our assets build up, it can be a wise thing not to have all of our eggs in one joint basket.

Mirror Trusts

Mirror Trusts are another form of Trust which couples can utilise. With mirror Trusts, like parallel Trusts, two separate Trusts are formed. However in the case of mirror Trusts the structure is that one party forms a Trust of which the other partner and the children and grandchildren are beneficiaries. The person forming the Trust is a Trustee of the Trust (and commonly the other partner is not) and is never a Beneficiary of his or her own Trust. The other Trust is a mirror image with the other partner creating the Trust but not being a Beneficiary. This form of Trust was very common 20 – 30 years ago and was specifically designed to avoid death duty problems. Since 1992 death duties have no longer applied in New Zealand and as a result of this change, this type of Trust structure has largely fallen into disuse. However if you talk to your friends about Trusts many people will still refer to this type of Trust or will confuse parallel Trusts with this type of Trust.

How do I decide which trust?

Generally I recommend to most couples that they use a parallel Trust structure and I am happy to expand on this advice during a face to face meeting. However, for some couples, the idea of having their assets divided between them is unacceptable – particularly sometimes for cultural reasons.

Before making a decision about which Trust structure you should choose it would always be essential to receive individual advice. I am happy to have an initial conversation with anyone about trust formation without charge.

QUESTIONS PEOPLE OFTEN ASK ABOUT TRUSTEES

Can I be a Trustee of a Trust when I am a Beneficiary?

Yes you can – there is nothing to prevent a person who is a Beneficiary of a Trust being a Trustee too and in most situations it is desirable that the principal adult beneficiaries or the Settlors should also be appointed as Trustees.

However, if a Trustee is also a beneficiary there will be some decisions that that Trustee will need to abstain from (or step down from making) if they directly benefit that Trustee personally.

What is an Independent Trustee and do I have to have one?

The term independent Trustee usually means a person who is appointed as a Trustee of a Trust who is neither the Settlor nor a Beneficiary – in other words someone who **does not** and will not ever receive any personal benefit whatsoever from the Trust.

Often the types of people who are appointed as an independent Trustee to a Trust are professional advisors eg: Accountants or Lawyers (or their Trustee Companies) or trusted family friends. They can sometimes be a relative or close friend who, while not a Beneficiary, is a trusted confidante and advisor within the family circle.

There is no absolute legal requirement to have an "independent" Trustee. A Trust is valid whether there is an independent Trustee or not. So, why do many Trusts still have an independent Trustee? There are two main reasons why many professionals still recommend an independent Trustee is used. These reasons can be described by the terms "continuity" and "transparency"

The term "continuity" means that if a Trust has an independent Trustee then if a disaster strikes and the other Trustees – usually a single person or a couple – are for example, killed in a car crash; then there is someone left who can simply carry on. They can for example, make immediate provision out of the Trust for any beneficiaries who are left (for example young children) without the time delays and possible difficulties involved in waiting for Probate to be issued to enable a will to take effect.

By "transparency", what I mean is that in forming a Trust we are going to a great deal of time, effort and expense to create a separate legal entity from ourselves. That step is essential to the effectiveness of the Trust structure we are creating. It is then necessary throughout the life of the Trust to continue to **rigorously** emphasise and demonstrate separateness from any other legal entities or persons including the private lives of the people who created the Trust or are Trustees or beneficiaries of the Trust (more about this later). The very presence of an independent Trustee and that person's active nvolvement in Trust decisions has the effect of underlining that separateness of the Trust's actions from other activities. Therefore, providing that the Trust is well managed and a good paper trail of decisions is maintained, this step can help to ensure that a Trust structure is always shown to be both real and separate.

Additionally an independent Trustee can sometimes be helpful in assisting the Trust to resist inappropriate pressure by beneficiaries on family member Trustees. An example of this is that as Trustee parents become elderly it can become difficult for them to feel able to resist assertive claims by their adult children to start making payments to them, or gifts, even if those older parents emphatically do not wish to do so. Family politics can become difficult. The presence of an independent Trustee can be both comforting and can provide a means of deflecting that kind of pressure in a family.

However it is important to realise that, as stated above. it is not an absolute requirement for there to be an "independent" Trustee to make a Trust either real or valid.

DO TRUSTEES HAVE DUTIES AND POTENTIAL LIABILITIES?

It is vitally important to recognise that being a Trustee of a Trust is an important role and has both duties which go along with it and potential liabilities and pitfalls which you need to be on alert for. I will deal with both topics separately in the following paragraphs.

A Trustee must:

1. Always act in the utmost good faith

This means all Trustees must act in the best interest of the beneficiaries all of the time and in particular must not make decisions for their own benefit – (more about that later!).

2. Always act in accordance with the terms and provisions of the Trust Deed

This means Trustees can never treat their role lightly – it is important to be fully informed both about the terms of the Trust and also of the details of every proposed action they take.

3. Always act as a prudent person

A Trustee exercising any power is required to exercise the care, diligence and skill that a careful and responsible person of business would exercise in managing the affairs of others.

Professional Trustees, that is people who have professional qualifications, such as accountants or lawyers, have an even higher duty of care.

Factors that all Trustees should have regard to are set out in the Trustee Act 1988. These include:

- → The desirability of diversification.
- → The nature of existing Trust investments.
- → The need to maintain the real value of capital or income.
- → The risk of capital loss or depreciation and the potential for capital appreciation.
- → The term of the proposed investment and the duration of the Trust.
- → The marketability of the investments.
- → The aggregate value of the Trust estate.

4. Never delegate your responsibilities. "Not delegating" means you cannot hand over your duties to some else

That means you can't just be a "rubber stamp" – not ever – you need to understand every action the Trust takes, make your own assessment of it and your own decision on it. This does not mean you cannot take professional advice e.g. from an accountant or an investment advisor – in fact that is often what a prudent person would do; but ultimately it must be you who makes the final decisions for the Trust – not someone else.

An example of Trustees breaching their duties to be prudent.

There is a High Court decision which found Trustees to be in breach of their duties, even though they had maintained the dollar value of the Trust over some 40 years. The case related to a Trust set up in a Will: The Trustees of the Trust were the widow and a professional Trustee company. The widow had the right to get the income the Trust received all of her lifetime. Ten nieces and nephews were entitled to all of the money once the widow died.

The Trustees largely invested in fixed interest securities like Term Deposits. This maximised the income of the widow and made it easy for the income to be paid over to her regularly. However this decision by the Trustees was to the detriment of the final beneficiaries. The interest was always paid out in full and the dollar value of the investments never increased. Thus the value of the investments did not even keep up with the rate of inflation. The judge found there had been a breach by the Trustees of their duties. In reaching his decision, the Judge spelt out various principles:

1. The duty of diligence and prudence	A Trustee has a duty not just to take care as, if he or she would if they only had themselves to consider. They must also take such care as an ordinary prudent person would take, if they were to make an investment for the benefit of other people for whom they felt obliged to provide.
2. The duty to act with strict impartiality and to maintain a balance	Trustees must act fairly in making decisions which may have different consequences for different classes of beneficiaries.
3. Trustees are separately responsible	Trustees must act together. It is not acceptable for one Trustee to delegate responsibility to another or to defer to the wishes of another.
4. Independence of a Trustee	Once a person has accepted the office of Trustee, that Trustee is obliged to exercise independent judgment and assume a duty which regards the interest of all beneficiaries. In this case, the widow was required to fulfil her duties to other beneficiaries, despite her conflict of interest.
5. Damages	The Trustee is liable to place the Trust in the same position as it would have been in if no breach of Trust had been committed. In this case the Judge awarded substantial damages to the ten nieces and nephews which the Trustee Company had to pay.

What does this mean for Trustees?

Whilst this case largely dealt with the law prior to changes to the Trustee Act in 1988, the principles set out in that case remain applicable today. They emphasise the prudent person rule. Trustees need to remain vigilant of their duties. As a Trustee you can give yourself a large degree of protection, if you:

- → Meet regularly.
- → Remind yourself of the purposes of the Trust.
- → Impartially review the investments of the Trust having regard to the principles stated above, the terms of the Trustee Amendment Act and the competing needs of the beneficiaries.
- → Seek the advice of recognised professionals (e.g. brokers or other investment advisors). Acting in accordance with such advice is likely to demonstrate the required impartiality and prudency.
- → Fully record your decisions and the reasons for those decisions.

Liabilities of Trustees

It is important to realise, that quite apart from incurring the kind of liability to Beneficiaries of a Trust, that are shown in the above case, Trustees can also find themselves with other unexpected exposures to liability. This problem of liability primarily arises because of the way assets are owned by Trusts. Even though a Trust is a separate legal entity the assets of a Trust are owned jointly in the individual names of the Trustees. So, for example, on the Certificate of Title for a property owned by a Trust the owner is listed by listing all of the names of the individual Trustees. What this means is that if the Trust fails to pay some obligations such as Tax, Council rates or Body Corporate fees, then it is the individuals named as Trustees who are personally pursued by the IRD, the Council or the Body Corporate for the unpaid bill. The Trust Deed will say, that, if that happens, you will have a personal claim against the assets of the Trust for any costs or other liabilities you incur (so long as it is not your own negligence that led to the unpaid bill). However, that will not stop you personally being sued by the IRD, Council or Body Corporate or those bodies having you listed as a bad credit risk with companies such as Baycorp. **This is a very sobering reality for Trustees.** Also, it is not much help to a Trustee to have a claim for compensation from a Trust for any money they are held personally liable to pay if, in the meantime, the Trust itself has become insolvent. If you are considering being involved as a Trustee, especially an independent Trustee, you will need to think very carefully indeed about how much you trust the people forming the Trust not to expose you to this kind of liability and the serious consequences it can have for your own credit record.

Another possible source of liability is in respect of any debt the Trust incurs. Again, because assets are owned in Trustee's individual names, if a Trust borrows say from a Bank, then the Trustees are signing loan, mortgage and sometimes guarantee documents which are in their own individual names. Most banks will agree, if you are an independent Trustee, to insert a special clause into those kinds of documents which limit your personal liability to the assets of the Trust (so long as you are not negligent or dishonest). Trustees need to be really vigilant to make sure that they see that clause clearly written into all documents they sign such as documents relating to borrowing and even in agreements for sale and purchase when Trust assets are bought and sold.

DO BENEFICIARIES HAVE RIGHTS?

The question of what extent Beneficiaries have rights which they can impose upon a Trust and upon Trustees is one of the issues that is often mentioned by people considering forming a Trust.

People wonder whether, if they form a Trust, they will find themselves fielding demands by Beneficiaries. Can they be "forced" to provide distributions from the Trust to a Beneficiary who asks or demands for it?

The primary answer to this question is that most family trusts in New Zealand are what are called "discretionary" Trusts. What this means is that decisions made by the Trustees, including whether to pay monies out of the Trust to a Beneficiary, are not obligatory. The Trustees have a complete discretion to make whatever decisions they choose to make on the basis of what they consider best at that particular time.

One primary duty of Trustees however is this; whenever they make a decision they must consider the needs and situations of all of the Beneficiaries. Having done that they are then free to make the decision that they, in their wisdom, think best for the Trust and its Beneficiaries.

It is therefore important to realise that, as a general rule, Beneficiaries cannot "rule the roost" where Trusts are concerned. However there is one rider to this. A Beneficiary may consider that the Trustees of a Trust are either being negligent or wayward in the way they are operating the Trust, or are not considering the legitimate needs of Beneficiaries. In that case, Beneficiaries can apply to the Court for the Court to review the activity of the Trust. The Court, if it agrees that a Trust is being mismanaged, can remove the Trustees and replace them.

If a Trustee was negligent in their duties Beneficiaries could also make a claim for compensation against them.

HOW DO I TRANSFER ASSETS TO A TRUST?

There are two ways that a person who has formed a Trust can transfer assets to that Trust.

We need to realise that when a Trust is first formed, as I have described earlier, it is like an empty box, just sitting there ready to receive assets. But assets don't end up in that box automatically – the Settlors and anyone else who wants to transfer assets to a Trust need to purposefully do something to make the transfer of those asset transfers happen.

The first option is to make a gift to a Trust. This is a very good way to get smaller sums of money available in cash into a Trust. If, for example, a person had $5,000.00 sitting in a bank account and wanted to transfer that money into a Trust then they simply get a cheque made out in favour of the Trust and pay it to the Trust and sign a deed stating that that money is a gift to the Trust. The Trust then takes that money into its own bank account and the job is done.

The second main method of getting assets into a Trust is by sale. For example, if you want to transfer a family home into a Trust or shares in a family company into a Trust, then this is the method that needs to be used.

One important principle lies behind this form of transfer of assets into a Trust. Any sale and purchase of assets by a Trust must be "real" – that is the sale must be for a proper price and with proper terms and conditions. Just as if the sale of the asset was a normal commercial transaction with the buyer and the seller being strangers. This is what lawyers call an "arms length transaction".

That means that for the sale of any asset to a Trust you need an appropriate valuation to establish the value of the asset. It is also vital that the valuation we use for this purpose is acceptable to the Inland Revenue Department and is less than six months old. Using our example of a family home, the most common form of valuations used is either a registered valuer's report or a Valuation New Zealand Desktop Valuation. Both of these forms of valuation are acceptable to the Inland Revenue Department. A Real Estate Agent's market value assessment is not acceptable to the Inland Revenue Department and cannot be used.

In the case of transfer of shares, if it is a publicly listed company then daily share market reports can be used to establish a sale price. If it is a private company like a family owned company then a valuation of shares prepared by an accountant will be needed.

Once the value of the asset to be transferred to a Trust has been established then an actual sale and purchase transaction needs to be completed.

This is the point where transfers of assets to a Trust can begin to feel very complicated. The process is best explained using an example:

Example Imagine you are a couple. You have a house which doesn't have any mortgages. It has a valuation of $540,000.00.
To transfer this house to your Trust, a normal Agreement for Sale and Purchase of Real Estate is prepared. It lists the sale price as $540,000.00. The problem is that your Trust is the buyer and it doesn't have $540,000.00 cash in the bank to pay you for your house. So what happens is: The contract, instead of saying that the Trust will pay you $540,000.00 on a certain date, simply says that the Trust will pay you that sum whenever you ask it to do so – the words used are "upon demand".
What this means is that as the house is transferred to your Trust it does not have to physically pay you for it – but it does owe you a debt of $540,000.00.

So far so good – BUT in fact you decide that you do not want your Trust to have to actually pay you for your house. Well you can "give" the house to the Trust by forgiving that debt. However if you choose to forgive a large debt then firstly you must be sure that you a solvent when you do that and secondly you must realise that if you give a large gift in one sum then the Government may look back at that gift in future if you seek assistance from them and or argue that you have deliberately deprived yourself of an asset and refuse you assistance. For that reason many people embark on a much slower process of progressively gifting parts of that debt each year to the Trust over many years.

The Government's approach to this matter has been changing rapidly in respect of this issue over recent times and specialist and individual advice would be needed before I could advise you on what process of gifting (if any) may be wise to consider.

WHAT ONGOING OBLIGATIONS, TASKS AND EXPENSES MAY I HAVE AFTER A TRUST IS SET UP?

The question of how much ongoing work and cost there will be in having a Trust will always depend upon how busy your Trust is and also whether it receives any income or not.

Generally, for most families there is little ongoing workload involved in having a Trust once all of the setting up work has been done. This is because many Trusts simply have the family home as their sole asset. In that case there is no income involved (you do not have to pay your Trust rent – it will usually be very happy to permit you, as beneficiaries to live in the house rent free). In the case the Trust does not need an IRD number or to do any tax returns.

If your Trust does own income earning assets such as a rental property, interest earning investments or shares, then your Trust will receive income each year. In that case your Trust will need an IRD number and it will need to have its own tax return completed each year.

If your trust changes its assets, for example by selling one house and buying a replacement, then it will be important for the Trustees to record decisions such as that by making written resolutions. For my family trust clients I regard this type of paperwork as an integral part of a Trust's activities and, I prepare those kinds of resolutions at the time we are doing those kinds of transactions without charging additional costs.

IS THERE A 'BEST' TIME TO FORM A TRUST?

If you have decided to form a Trust then there is certainly no wrong time to form a Trust. However, there are some times which are particularly strategic from the perspective of keeping costs to a minimum.

One of those times is if you are in the process of selling and buying a home or think you might do that in the near future. If you form a Trust at that time then your home can be sold, your Trust formed and the purchase of the next home carried out in the name of the Trust. In contrast, if you form a Trust and wish to put your existing home into the Trust then in fact the same process has to take place, namely the existing home is "sold" with all of the attendant costs such as the costs of discharging the current mortgage. The home is then "purchased" by the Trust again, with all of the costs involved in that process. Therefore if you are already thinking of selling and buying in the foreseeable future it is worth waiting until that time before going ahead with your Trust – that way you save doubling up on those costs.

If you are not thinking of changing homes anytime soon and do want to go ahead and form a Trust the other strategic time to do that, if you have a mortgage, is at the time when your current period of fixed rate lending is about to the end. The reason why that can be a cost effective time to form your Trust is because as your home is "sold" to the Trust your existing mortgage must be repaid and a new loan and mortgage in the name of the Trust taken out. If you have a fixed rate loan then this process can trigger the requirement to pay penalties for early repayment. Therefore it can be wiser to wait until the time that your current fixed rate period comes to an end to form a Trust.

ARE THERE SOME TYPES OF FINANCE OR OTHER MATTERS WHICH DON'T SIT WELL WITH TRUSTS?

One particular form of finance which can present a problem for people who want to have a Trust is a "revolving credit" type of facility. The reason this type of finance can prove difficult is because it can breach the boundary between your own private life and the activities of your Trust.

As I have said earlier in this booklet, it is vitally important to make sure that your Trust operates as a separate legal entity from the people who created it and from the Trustees. With "revolving credit" types of loans generally speaking the benefit of this type of borrowing is maximised by personal income such as salaries and wages being credited to the revolving credit account. If you have a revolving credit facility in the name of your Trust then you cannot do this because if you do you are "mingling" your own money with the Trust's money. This does not mean that you cannot have a revolving credit facility and use it in this way if you have a Trust. What it does mean is that this kind of borrowing needs to be carefully structured and that particular part of your borrowing remains in your own personal names and not in the name of your Trust.

HOW EASY IS IT TO CHANGE THINGS ONCE YOU HAVE A TRUST?

Many people feel concerned that if they form a Trust then any changes they may want to make in the future will then be impossible. Here are some of the questions that people frequently ask:

Can I change houses?

Your Trust is able to change its assets as readily as you can personally. It is perfectly acceptable for your Trust to decide to sell the home it owns and which you occupy and buy a replacement for you instead.

Can I change the Trustees – particularly the Independent Trustee?

Circumstances can change and even relationships can change. If you feel that you need to change your Independent Trustee it is a simple process to do so. The way my standard Trust deed is written, an Independent Trustee could not prevent you from removing them and replacing them with another person if you chose to do so.

Can I change the Beneficiaries?

In my standard Trust document it is possible to add further beneficiaries to your Trust. You can decide whether those additional Beneficiaries are either permanently added or added revocably – which means they can be added for a period and then removed again. In my standard Trust document it is not possible to remove Beneficiaries.

Sue Fordyce, Barrister & Solicitor/LL.B 66 Victoria Ave, Victoria, Palmerston North
Phone: 06 355 0531 › **Mobile:** 027 4452213 › **Website:** www.suefordyce.co.nz