

Extract from:

Family Trusts : A New Zealand Guide – New Revised Edition

How to Manage Family Trusts and Protect Them from Attack

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INTRODUCTION

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I once did a talkback on a Christchurch radio station. The topic was family trusts and 15 minutes was scheduled. But as soon as we started talking the switchboard lit up with incoming calls – the scheduled 15 minutes became 45 and we could have gone on much longer. Such was and is the public interest in family trusts.

At my seminars and talks on family trusts around the country people have listened intently and asked many questions afterwards. But it sounds such a dull, even esoteric, topic. A topic for lawyers, accountants and perhaps a few high-flying business people – but not for the general public. So why all the interest – not just among corporate and dark-suited types, but from people in the street? Why has New Zealand alone embraced the idea of family trusts when in other countries they are only for very high net worth families?

Interest was initially stirred by the controversy over asset testing for social welfare benefits and subsidies, and the superannuation surcharge. At the time of the talkback show a political storm was raging over rest-home subsidies and charges for long-term hospital care.

But perhaps even more important than this has been a growing awareness of the other uses of trusts – for succession planning, control of ‘wayward’ family members, tax planning, conducting one’s affairs in confidence, and matrimonial and relationship arrangements.

Today there is an awareness of the flexibility of a family trust as a vehicle for the ownership of assets: a family trust allows you to have the benefit and use of assets, even though you do not own them. No other entity offers the same degree of adaptability and flexibility.

There is also an awareness that family trusts are not just for the professional or business person with considerable assets. Indeed, given the potential benefits, people of relatively modest means can (in fact probably should) place at least some of their assets in a trust.

I am neither an accountant nor a lawyer and this book is not written for professionals. It is an attempt to bring the concept of family trusts to ordinary people, and to show how trusts work – the benefits, disadvantages and taxation considerations – in a way that is easily understood and useful. Certainly, there is some detail that professional people may find interesting and useful, but the book is not predominantly for them. It is for owners of small and medium-sized businesses, retired people and wage and salary earners.

However, a warning! The decision to establish a family trust and put some of your valuable assets into it is not one to be taken lightly, nor should it be done without proper advice. Although the concept of a family trust is not difficult, there is a great deal of detail that can be quite complex. All this detail is important. It is not good enough to have the concept right but to miss a seemingly small point. Forming a trust and putting your assets into it is a big step.

After all, you are looking at ‘alienating’ yourself from your most valuable assets, perhaps from everything you have worked for all of your life. While you could probably undo the trust, it can become messy and expensive. The decision to form a trust therefore requires careful consideration, and the subsequent management of the trust must be properly undertaken. There can be a considerable cost for mismanagement in terms of both time and money.

At the time of writing the laws governing family trusts remain fairly liberal, but this could change at any time. Members of Parliament, the courts, WINZ and the Inland Revenue Department all have it within their power to change the rules. While the information in this book is, I believe, correct today, it is essential that you get good advice from someone who is up to date with the latest trends before you set up your trust.

Good advice need not be expensive: the right person should be able to establish what it is you are trying to accomplish, and put a suitable trust in place quickly, efficiently and for relatively little cost. Beware the 'word processor' approach to trusts – a trust should be tailor-made to your requirements, not mass-produced and bought off the shelf.

A trust is a legal matter and setting one up is a job for lawyers and trust companies. Certainly your financial adviser and accountant may need to assist, but a trust company or solicitor should do the actual trust formation and asset transfer. Each trust needs to be formed on an individual basis after careful examination and consideration of your personal and family circumstances.

Most people reading this book could probably establish a family trust for at least some assets. People's reasons for forming trusts will vary enormously, but the discretionary and flexible nature of family trusts can cater for all.