

The benefits of having a corporate trustee for your family trust



We would like to discuss a simple concept that sometimes causes confusion but which can save money and make life simpler.

The concept is replacing the persons who are the trustees of your trust with a company that the present trustees are the shareholders and directors of.

Present situation

Ownership of land and company shares may not be recorded in the name of a trust, such as “Jack & Jill Family Trust”, and, instead, must be registered in the names of all the trustees. So, the trust’s house will be registered in the names of Jack, Jill and, possibly, Reuben their independent trustee.

More about independent trustees later.

If one of the three trustees dies or retires, documentation has to be registered in the Land Titles Office to prove the death and to transmit the house to the continuing trustees. If they decide to add another trustee, the continuing trustees have to sign more documents to transfer the property to themselves and the new trustee.

All this documentation and registration costs. If there are mortgages involved, current practice, on the introduction of a new trustee, is to release the old mortgage, have the continuing and new trustees sign new loan documents and then register a new mortgage.

Good work for us but quite a cost to the clients.

The situation is even worse if a trustee becomes mentally incapable. In the past, the trustee’s attorney has signed the papers to remove that trustee but the Land Titles Office view is that a court order is required—more costs!

Solution

There is a simple solution to avoid these costs and that is to change the trustees so, instead of having people as trustees, you have a company as the sole trustee.

The present personal trustees could be the directors and shareholders of the new trustee company. They would be removed as personal trustees and the company would appointed to be the sole trustee of the trust.

Once this is done, there will be no need to record in the Land Titles Office changes of trustees as trustees retire or die—the company would continue to own the trust’s assets irrespective of changes to its shareholders and directors until the trust is wound up.

As a director or shareholder retired or died, changes would be noted with the Companies Office. Currently, no fee is payable. Nothing would need to be registered with the Land Titles Office and, certainly, no mortgages would have to be replaced.

Having a company as a trustee is not as daunting as some suspect. Companies Office fees to incorporate a company total \$160 and many clients form their companies online with a little help from

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us. Companies file with the Companies Office an annual return each year, which currently costs \$45.

Apart from that annual charge, there are no other costs to maintain a company unless you ask us to file the annual return.

Because the trustee company will never own assets in its own right, it will never earn any income in its own name and it can obtain from IRD a dispensation to avoid filing nil-income tax returns for itself.

Accordingly the company will be able to perform its duties with little administration; without having to prepare financial statements and without having to file tax returns.

The company will just be the vehicle for the persons who would otherwise be the trustees personally.

Independent trustees

When estate duty (death duty) existed, property transferred to a trust could still be regarded as belonging to you if Inland Revenue decided that you had not fully given up control over the property. A common way to show that you no longer controlled the property you transferred to a trust was to appoint someone who was not a beneficiary of the trust to be an independent trustee.

The law has never required trusts to have an independent trustee and the strategy just mentioned was only adopted to avoid claims that control had been retained.

In our experience, many of the people appointed as independent trustees never take much interest in the affairs of the trust and clients are embarrassed when they have to ask independent trustees to sign trust documents.

The removal of estate duty means that there is no longer any need for the

trustees of a family trust to include an independent trustee.

This means that you can simplify the administration of your trust by dispensing with the persons you appointed as your independent trustee and just have your spouse and yourself in charge of your trust through a company that you appoint to be the sole trustee of your trust, as suggested above.

If there is a need to have an independent trustee, you can appoint someone who is not a beneficiary to be another shareholder and director of the trustee company.

Further advantages of our proposals

You will never have to record expensive changes of trustees as trustees retire and die and, if you remove trustees who were intended to be independent trustees, you will cease to have other people involved in your trust's affairs and, therefore, you will never have to obtain signatures from others to conduct the affairs of your trust.

Because companies have perpetual succession, and never die, they are ideal to own assets in countries that assess taxes on death, such as, the UK and some states in Australia. In fact, even if you do not have a trust but own assets overseas, such as, shares in overseas companies, we recommend you form a company to hold the shares on your behalf.

General

We consider that the sooner clients set up trustee companies for their trusts and dispense with the services of unnecessary independent trustees, the sooner they can avoid the costs of changing trustees and cease to involve their (usually) friends in their financial affairs.

We repeat that, having a corporate trustee, will mean less documentation costs in the future because little has to be done when directors/shareholders change.

Costs

If you would like us to prepare an estimate of the costs for replacing the present trustees of your trust with a corporate trustee, please let us know. As a guide, we estimate a fee of \$820 (including GST) to change your trustees to a corporate trustee if no land is owned by your trust and if you form the company and attend to the requirements

of your trust's bank and other investment holders to update the trustees. In addition, there will be a fee for our preliminary advice on your particular situation.

If we have to change land ownership and file documents with the local authority and Land Information NZ, there will be an additional cost of \$275 including GST and the registration fee provided there are no mortgages. We will prepare a specific estimate where mortgages are involved.

Please also let us know if we can supply further information.

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