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Resettlement of Family Trusts

When parents die, they pass control of their family trust to the final beneficiaries of the trust who are, usually, their children.

The children can wind up the trust and distribute the trust fund amongst themselves, however, there is a very valuable resettlement option to which we would like to draw to your attention, to maximise the value of what the parents have achieved by transferring their wealth to their trust.

The children have the ability to have their share of their parents trust transferred to their own trust, and by doing so, can avoid a potentially long and costly gifting programme, and minimise the risk of claims by creditors or spouses to the assets.

Trusts and gifting: background

It is quite common, in New Zealand, for people to set up family trusts and to transfer to their trusts their major assets. The benefits of doing this in good time are:

- Protection of assets from creditors and business risks.
- Protecting property from relationship property claims made by future spouses and partners.
- Maximising the chances of preserving wealth for the family.

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Valuable option

We consider the ability to have a child's share of their parents' trust fund immediately and safely transferred to their own trust is very valuable and children should consider setting up a trust on their parents' deaths (if they do not already have a trust) just to take advantage of this unique opportunity.

The potential benefit from having a child's share of their parents' trust fund transferred safely to the child's own trust is so great compared to the relatively small cost to effect a resettlement, that we recommend children should carefully consider taking advantage of the opportunity.

If a child's share in a trust fund is paid to the child directly, the child may not be able to get the share into their own trust without going through a potentially long and costly gifting programme.

Relationship property

The property of people in relationships is either separate property or relationship property. Only relationship property has to be shared between partners.

Distributions from parents' trusts to their children are usually the recipient's separate property and the children's partners are not usually entitled to share in it.

To keep resettlements from parents' trusts as separate property, resettlements should go to separate trusts set up by their children alone.

This explanation is brief, so, please ask us for a full consideration of your circumstances.

General

Children have a unique opportunity to maximise the trust that their parents created and to transfer their share of the trust fund directly to their own trust without being affected by the "normal" rules and limitations mentioned above.

We note that the laws regarding trusts and welfare benefits are always changing and government policies likewise. The above advice reflects our current knowledge and understanding but we cannot guarantee any particular outcome or that the current legal situation will be the same at any future time.

Please let us know if we can supply any further information or assistance. We have free notes on trusts and asset protection we can send if you wish.