

**Notes from Public Trust Speakers at SeniorNet
Monday 20th June**

Helen Trembath and Robyn from North West Office

Q: What are the major advantages of establishing a **Family Trust** rather than a will?

A: No advantages, the two can work together. If you want to protect your assets from future relationships best to establish up front – consider putting your assets in a Trust. The assets are then in the name of the Trust, not your name so decision making becomes shared not just yours. But if you want to sell the property you have to let the others know as they all have to agree and sign. A trust involves resolutions and admin so a Trust can complicate your life but there are other hands that can help to protect your assets as your assets are settled into the Trust – so Trusts can make things easier but also more complicated.

Q: **Giftng?**

A: If you have a current Trust and want to distribute some money after the sale of your property – this has changed since 2011.

Giftng was commonly \$27,000 but after 2011 changes came into law. You can still gift, but it is more than \$27,000. If you buy a smaller property after the sale of your house and have a mortgage of say \$100,000 and want to gift money to family then suggest you keep \$100,000 for your mortgage in the Trust before distributing the rest.

You can gift the whole amount in your Trust and there are likely no be tax implications in NZ but when it comes to Residential Care Subsidy your giftng will be taken into consideration. There is no time period for this and it can go back 10 years or more, the time frame is a grey area.

Residential Care Subsidy: MSD will do an asset assessment and also look at your Trust, past and present records.

You are allowed to keep up to \$237,000 and if your assets are below including your family property this will be considered for a RCS (Residential Care Subsidy). If one partner has to go into care the family property will not be counted but it will be included if the second partner goes into care.

Trusts: It is the responsibility of Trustees to hold meetings (at least annually) and keep minutes and financial reports – all Trustees have to be advised. Can have meetings more than once a year but only annually are required.

If you have a Trust Deed pre-1997 you should have it reviewed as there have been changes. If there is a change in Trustees or new Trustees added this should be done at a meeting with minutes recorded and distributed to all Trustees. New Trustees may want to review activities. Financial reports should be presented and follow standard accounting practice.

There is a requirement for Trustees to advise beneficiaries over 18 years of age of changes – there is a greater ability now for beneficiaries to ask for information. Trustees including discretionary trustees must supply this information to beneficiaries. You can be the primary beneficiary and your children/grandchildren can be discretionary trustees. If you are both Trustee and sole Beneficiary then likely this is a sham Trust.

Q: My beneficiaries live in the UK, I have no children can I leave my Trust to my nieces and nephews in the UK?

A: Yes you can leave to beneficiaries in the UK or USA but there are requirements and greater admin costs. You may be best to go to a tax specialist in UK or on UK/US tax matters but this can be expensive and they can take up to 30% fees and inheritance tax so robust advice is important from a tax professional.

Q: Can there be tax implications for beneficiaries leaving in Australia?

A: Yes but major tax firms in NZ may be able to give advice on this.

Q: Did the Trust Act 2019 make changes for Trusts and Wills?

A: There were changes but the Family Protection Act works in conjunction with the Trust Act 2019. The longer an asset have been in a Trust or Will it becomes harder for other to challenge.

Q: Is a probated Will public?

A: Yes after probate is granted your Will becomes a public document but under Family Trusts only Trust beneficiaries can have access. If a trustee is the sole final beneficiary, say 2 other Trustees have died then maybe it's advisable to appoint another Trustee, it's not usually difficult to update Trustees – see your lawyer.

Q: If your lawyer is a Trustee and he/she dies can I assume the firm will take over this role?

A: No unless the law firm is named Trustee rather than the individual lawyer.

Q: Powers of Attorney – have these changed recently?

A: No recent changes, the last were about 4 years ago. Documents drawn up since then are likely to be current.

Q: Beneficiaries of a will living in UK is this the same as a Trust beneficiary?

A: Yes similar to a Trust and there are tax implications.

Q: If you gift ahead of time is the tax likely to be the same?

A: I am unsure of that answer.

Q: Changing my Trust or updating? Changing from one Trust to a new one and also changing bank accounts it an expensive business.

A: Yes maybe it is cheaper to go to the Public Trust although not necessarily if all the documents remain the same. This exercise could cost from \$1,500 to \$7,000.

Both Speakers Helen and Robyn were thanked for their expertise and their time.