

THE REALITY OF TRUSTS

Not everybody who sets up a trust and transfer property to the trust envisages the problems which may arise and a large number of people do not appreciate what may happen if they lose the rights of ownership of their property. Most trusts work well, especially if they are managed properly, but occasionally unforeseen events occur.

Recently I read an article about a trust which shows how harsh trust law can be. A husband and wife occupied a house which was owned by a trust set up by the husband for the benefit of his family. It was a second marriage for both and the wife was not a beneficiary of the trust. The husband left a memorandum requesting the trustees of the trust to allow the wife to remain in the home for the rest of her life.

The husband died and soon after his death the trustees requested the wife to vacate the home. They had taken legal advice which confirmed that as the wife was not a beneficiary of the trust she had no right to claim a right to reside there. The trustees were also advised that the trust had no available funds, but that is true of most trusts which are set up solely for asset protection. The husband's memorandum of wishes was not enforceable by the wife. She had to leave the property and find alternative accommodation.

The above scenario brings into sharp focus the fact that once a property has been transferred to a trust it no longer belongs to the former owner or owners even though they may still reside there. Trust property is owned by the trustees and is held in trust for the beneficiaries of the trust. A memorandum of wishes is just that, and cannot be legally enforced.

When considering setting up a trust it is important to consider the needs of all interested parties and to have regard to all eventualities which may arise. There are ways of dealing with most issues and it is essential to try to avoid treating anyone unfairly.

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