

## **THE SECRECY OF TRUSTS**

I do not always greet clients setting up a trust with much enthusiasm. There are a number of reasons for my lack of enthusiasm one of which is that the settlor will very often be a trustee of the Trust and as such he/she will administer the trust to suit himself.

Historically many trusts were set up to provide for someone who the settlor was obligated to but wanted to keep the beneficiary's existence, and details of the trust secret. There is still no obligation on trustees to inform beneficiaries of the trust that the trust exists and to provide them with copies of the Deed of Trust and details of the ongoing running of the trust property. Without any knowledge of the Trust's affairs a beneficiary cannot monitor the trustees administration of the Trust and ensure that they are undertaking their duties in accordance with the principles of trust law.

Recent cases and judicial pronouncements show a trend away from the secrecy surrounding trusts. It has been held in a recent case that trustees must provide the beneficiaries of a trust, including discretionary beneficiaries, with copies of trust documents unless there is good reason not to make disclosure.

There is also a discussion document to be produced soon by the Law Commission to look at defining the duties of trustees which may result in a more open trust regime for the beneficiaries. It may result in the setting up of a Register of Trusts with details of the Trustees, beneficiaries etc., much like the Companies Register.

It is fair to assume that many trusts are being administered ineptly by the trustees with beneficiaries kept in ignorance of their status as a beneficiary, and scant regard for trustees' obligations.

The downside of imposing enforceable duties on trustees is that few people will want to take on the role of trustee. It is not difficult to imagine an "outside" trustee becoming embroiled in argument among family members about the administration of the family trust and their entitlements. Still it is worthwhile to have discussions about such issues to find a suitable middle ground which should give all parties the rights they are entitled to.

Having said that I lack some enthusiasm for trusts I firmly believe that Trusts have a major role in today's world. My main concern is that trusts are not always administered as they should be and many, if challenged, would not be upheld by the Courts. Recently the Court has held that where beneficiaries of a trust had access to the trust fund orders would be made for fines and reparation and the beneficiaries who were bankrupt personally, could access funds from their trusts to pay fines and reparation. The Courts are also listening to and upholding many challenges to trusts in the relationship property area, but that is a story for another day.

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