

TRUSTS – OUR GREAT LEGAL ICONS

Trusts are one of the law's hardy perennials and with the changes made to the taxation of trusts under the last Budget they continue to be relevant for many of us.

People setting up a business which may attract a liability for debt where the owner of the business is a sole trader should consider putting their main assets into a trust to protect those assets from creditors. If a sole trader goes bust creditors will attack any assets her/she may have. If the assets are in a trust and no personal guarantees have been given those assets have protection from creditors. However if assets are transferred to a trust specifically to avoid creditors, the Courts will allow the creditors to pursue the assets which were wrongly transferred to the trust.

Having assets in a trust can also protect them from ex-partners and other claimants under the Property (Relationships) Act but great care must be taken to preserve the trust assets as separate property. If the assets are mixed up with relationship property the Courts may declare that the trust's assets are not separate property.

Some experts are keen for settlors of trusts to be able to exclude "undeserving" children. If that is a settlor's intention he/she must be very careful as once a trust is set up the beneficiaries are named and can only be altered if the Trust Deed specifically allows persons to be added or excluded as beneficiaries. Peoples' circumstances can change over the years and careful consideration must be given if a child is excluded from a trust.

There are a myriad of other good reasons for considering setting up a trust. Having said that careful consideration should always be given about whether a trust is an appropriate for our circumstances if the answer to that is yes, then great care must be taken in the drafting of the trust deed to suit the settlor's circumstances. Having set up the trust it must be administered properly to avoid the Courts intervention if disputes arise. It is most important that all persons involved in a trust are fully aware of the obligations of all who are involved with the trust.

This article has been prepared by Bessie Paterson, a Partner with Ronald Angland & Son, Solicitors, who may be contacted on Tel: 03 349-4708 or e-mail bessie@anglands.co.nz
odocs/BessieArtJuly10Trusts