



Family Trusts

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Family Trusts

One of the few certainties in life is change. Although change can be exciting, it can also create significant financial risks for you and your family. Establishing a family trust can help to protect you and your family from these financial risks.

The aim of this booklet is to provide you with the information you need to make the following three decisions:

1. Whether establishing a family trust is appropriate for you and your family
2. How to establish your own family trust
3. How to administer your family trust after you have set it up.

A family trust should be designed to protect you and your family. As everybody's situation is different, family trust arrangements need to be tailored to your particular situation. The information in this booklet provides a general guideline but cannot replace the detailed legal advice you will receive from your Lawlink lawyer. If you decide to establish a family trust, your Lawlink lawyer will ensure that the trust arrangements you put in place are tailored to meet the needs and aspirations of you and your family.

You will note that a number of terms throughout the document are printed in bold type. These terms are particularly significant and you can find a useful explanation of these terms at the end of the booklet.

Should
you have
a Family
Trust?

What is a Family Trust?

A trust exists whenever one person, a **settlor**, gives property to another person, a **trustee**, to hold for the benefit of a third person, a **beneficiary**. A family trust is therefore a relationship between:

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1. The **settlor** who creates the trust and decides what goes into the **trust deed**; and

 2. The **trustees** who hold title to the trust assets in their own names and deal with them as instructed in the **trust deed**; and

 3. The **beneficiaries** who receive the benefits from the trust. They may include:
 - a. Discretionary **beneficiaries** who may receive a benefit from the trust at the discretion of the **trustees**;
 - b. Final **beneficiaries** who are entitled to whatever funds are still left in the trust when it is wound up; and
 - c. Primary **beneficiaries** who are discretionary **beneficiaries** given some sort of priority ahead of the other **beneficiaries**.
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For most purposes, a trust is treated like a separate legal person. Income and assets owned by a family trust are not owned outright by either the **trustees** or the **beneficiaries**. Trust assets only become the property of the **beneficiaries** when **trustees** transfer the assets from the trust to the **beneficiaries** personally. As a result, trusts can be used to achieve a number of objectives. These are summarised as follows.

What are the advantages of Family Trusts?

Creditor protection

Assets in a trust are usually protected from any creditors of the **beneficiaries** or the **trustees** personally. This is because neither the **beneficiaries** nor the **trustees** own the trust assets for themselves, but under the relationships established by the **trust deed**.

Protection against relationship property claims

If you give personal assets to your children during your life or in your will, those assets may, in certain circumstances, become available to their partners under the Property (Relationships) Act 1976 (see page 19). However, if your assets are owned by your trust or are given to your trust on your death, then your children can continue to receive the benefit of those assets: the assets do not form part of their personal property, and therefore cannot be subject to claims by their partners.

If you transfer your assets into a family trust before you enter a relationship, your new partner will not usually have any claim against those trust assets if you separate. This issue is explored in more detail on page 19.

Protecting property from spendthrift beneficiaries

During your life or in your **will** you can simply give your assets to your children. However, you may be reluctant to do this where you have legitimate concerns about the ability of your children to manage their financial affairs. If you give your assets to a family trust then the trust can provide your children with income and/or capital to meet their legitimate cash requirements as they arise. This can protect the long-term value of your family's assets.

Protecting children with special needs

Family trusts offer possible protection against means testing of Government benefits such as the sickness/invalid benefit. A family trust may also protect a child with special needs from other family members who may assume control of family assets when you die.

Protecting assets for future generations from potential tax law changes

Family trusts may provide protection against various forms of wealth tax which may be introduced in the future such as death duties or inheritance tax.

Possible protection of eligibility for income/asset tested benefits

Government benefits such as the widows' benefit and long stay residential/hospital care subsidies are subject to asset testing. Assets held in a family trust are not usually taken into account in assessing your eligibility for such benefits.

Trusts make an excellent final beneficiary under a will

You can leave your personal assets to a trust rather than directly to named family members when you die. This gives much greater flexibility than a conventional **will**. The **trustees** of a trust can decide when to make payments to the trust **beneficiaries** and even whether to make such payments available at all.

As an alternative, you can leave your estate to trusts established by your children. Your children can benefit from this type of arrangement, particularly where significant sums or assets are involved, as it allows your assets to be transferred directly into trust without the need for a time-consuming **gifting programme**. The disadvantage of this arrangement is that the benefits provided by the trust structure are only available to your children, not to you.

Reducing or preventing family protection claims

The Court can effectively rewrite your **will** under the Family Protection Act 1955 if it considers that members of your family have been disadvantaged by its provisions. However, the Court cannot rewrite your trust for Family Protection Act purposes.

Dealing in/developing property

A taxpayer who deals in property or develops property may be classified as a dealer or developer under the income tax rules. This classification can result in property transactions being taxed in situations where tax would not normally be involved. For example, the capital gain on the sale of a rental investment might be taxed. Previously, a trust could be used to minimise this tax liability. Recent law changes have largely removed this benefit. However it is important to consider the tax rules in relation to your own specific fact situation. You should contact your tax advisor to discuss whether a trust can provide you with any tax benefits.

General flexibility to deal with changes in the law

Modern **trust deeds** normally allow limited rights of variation to deal with changes in the law.

Tax saving on beneficiaries' income

Trusts are a separate entity for tax purposes and must file a return if they receive income. **Trust income** is taxed in the following ways:

- “**Beneficiaries' income**”: this applies where the trustees pay income to the **beneficiaries** and the income is then treated as if the **beneficiaries** had earned it themselves. The **beneficiaries' income** will be added to their other income and they will, in most cases, be taxed in the usual way. If the **beneficiaries** are not already receiving a significant income they may be able to take advantage of the lower rates of tax available to them.
- “**Trustees' income**”: this applies where the **trustees** elect to retain the income and results in a flat tax rate of 33%.

Taxation issues are dealt with in more detail on page 17.

Confidentiality

Family trusts are not publicly registered and the details of your family trust arrangements can therefore be kept confidential.

What are the disadvantages of family trusts?

Loss of ownership of assets

If you transfer your personal assets to a trust then the **trustees** of that trust will own the assets. Although you can retain some control by holding the power to appoint and/or remove trustees, or even by being a **trustee** yourself, it is important to remember that assets you transfer to a trust are no longer your own. If you continue to treat the assets as your own then the trust could be open to challenge as a **sham**.

Additional administration

If you establish a trust you need to allow for the time and cost involved with meeting the trust's annual accounting, **gifting** and administrative requirements. These requirements are explained in page 15 of this booklet.

Cost of formation of the trust/transfer of assets

There are costs involved with establishing a family trust. These will depend on the complexity of your trust and the nature of the assets to be transferred.

Future law changes

Possible changes to legislation or trust law may remove or affect some of the original objectives for the trust formation.

Is a family trust appropriate for you?

In some cases an immediate financial benefit can be achieved by establishing a family trust. More often a family trust is formed to reduce the impact of changes which may or may not occur such as:

- claims from business creditors;
- the need to apply for asset tested benefits such as residential care subsidies; or
- relationship breakdowns.

In these cases a trust can be compared with insurance against sickness where an insurance premium is paid but no benefits arise if the insured does not get sick. For a family trust the initial set up cost and ongoing annual costs can be regarded as a sort of insurance premium.

A trust may not provide any benefits if the risks protected against:

- never arise;
- arise too soon, before sufficient **gifting** has been completed; or
- arise after the law has been changed so that the protection originally offered by the family trust structure is no longer available.

Are there limits to the protection offered by a family trust structure?

There are some limits to the protections offered by a family trust arrangement. A family trust cannot be used to avoid current and legitimate claims by the IRD, business creditors or relationship partners. If you are already subject to such claims then setting a family trust up now will not protect you or your family. However, family trusts are a legitimate way of protecting you and your family from potential claims which may be made against you or your family members in the future. Your intention in establishing the trust is therefore an important factor to consider and discuss with your Lawlink lawyer.

What will it cost?

Establishing your family trust

Your Lawlink lawyer will be able to provide you with an estimate of the fees you should budget for to establish your family trust. The fee estimate will cover:

- Meeting with you to discuss your intentions and requirements.

- Preparing a **trust deed** to match your particular situation.
- Preparing a **memorandum of wishes**.
- Preparing new **wills** and **enduring powers of attorney**.
- Discussing asset transfer options with you.
- Completing the transfer of your assets.
- If required, arranging for the restructure of your financial arrangements such as the lending secured over any property to be transferred to the trust.

Ongoing costs

The ongoing legal costs you should budget for will include:

- The annual paperwork required for your **gifting programme**; and
- Any additional legal or accounting work required to administer your trust.

Should you have a family trust?

In deciding whether you should establish a family trust you need to weigh the advantages against the disadvantages. Your Lawlink lawyer can assist you with this process. If the advantages outweigh the disadvantages in your particular situation then you should consider establishing a family trust. The next part of this booklet explains the major decisions you will need to make if you decide to establish a trust.

An example

Roger and Marie have two children and run their own manufacturing business. Although their business is successful and trading well they recognise that if their business experiences a significant downturn they may be exposed to personal risk from creditors of the company. One of their children, David, suffers from Down syndrome and is likely to need professional care throughout his life.

Roger and Marie want to protect their family assets for their retirement and for the benefit of both their children.

To protect their family Roger and Marie decide to establish a family trust and they transfer their family home and some other investments to the new trust. The assets they transfer to the trust will, in most cases, be protected from claims by business creditors if their business fails. When they die, the trustees of the trust will be able to provide long-term benefits both to David and to Roger and Marie's other son, Michael, as needs arise. In particular, the trustees will have the flexibility to provide for David's long term residential care needs.

Establishing a Trust

Important Decisions

Establishing a family trust is a decision which can have a significant impact on the benefits you and your family can receive from your family assets.

It is therefore very important that the trust is established in such a way that it will meet the needs of you and your family. For this reason, trusts should not be established thoughtlessly using standardised documents. There are a number of particularly important decisions which you need to make in establishing a family trust. Your Lawlink lawyer is trained to identify and discuss these issues with you and to ensure that the family trust you establish will meet your particular needs.

The six major decisions which you need to make in establishing a family trust are:

1. Who will be the **trustees**
2. Who will be the **beneficiaries**
3. Whether you should establish one or more trusts
4. How to structure the **trust deed**
5. What other documents you need to prepare to complete your estate plan
6. What assets to transfer to the new trust

Decision 1:

Who will be the trustees?

Trustees hold title to trust assets in their own name and have the power, subject to the **trust deed**, to deal with those assets as they see fit. Given the power that **trustees** have to control trust assets it is particularly important that you choose **trustees** with common sense whom you can trust to manage the trust affairs in a way that will provide the maximum benefits possible to the **beneficiaries**. The only restriction on who can be appointed a **trustee** is that **trustees** must be mentally capable and over 20 years of age. You can be a **trustee** and a **beneficiary** of a trust you establish.

If you decide that you will be a **trustee** of your own trust, we generally recommend that you also appoint an **independent trustee**; this helps to protect the trust from claims that it is a **sham**. You can appoint anyone you trust who is mentally capable and over 20 years of age to be an **independent trustee**. For example, you could appoint a friend or a trusted professional advisor. Many professionals also run trust management companies which can be appointed as **trustees**.

As an alternative to appointing an **independent trustee**, some modern trust deeds provide for the appointment of an **independent protector**. An **independent protector** is not a **trustee** but their approval is required for a number of important decisions such as capital or income distributions or variations to the trust deed. As the **independent protector** is not a **trustee** they do not need to be involved with the trust on a day to day basis or sign all documents to be signed by the trust such as bank loan and security documents. This arrangement simplifies the administration of the trust but retains the involvement of an independent person in major **trustee** decisions.

Your **trust deed** should give at least one person the power to appoint additional **trustees** and to remove any **trustee** from office. If you set up the trust you would usually have this power of appointment and removal.

Decision 2:

Who will be the beneficiaries?

Anybody can be a **beneficiary** of a trust. It is important to remember that discretionary **beneficiaries** do not have an automatic right to receive benefits from the trust; they only have a right to be considered by the **trustees** when the **trustees** decide to make benefits available. This means that the group of **beneficiaries** you choose should be wide enough to include people who you actually want to benefit from the trust but not so wide that the **trustees** have to consider the needs of a large, disparate group.

The most common groups of **beneficiaries** are relatives, close friends, charities and other trusts established for the benefit of these **beneficiaries**. We generally include a power for you to add further **beneficiaries** to the trust once it has been established so that the trust can be changed to meet the future needs of your family.

If you set up a trust, you can be a **beneficiary** as well as a **trustee**.

Decision 3:

Should you establish one or more trusts?

In certain circumstances, we recommend establishing more than one trust to protect the interests of a single family. This arrangement is particularly suitable:

- Where there is a particular need to separate the ownership of a family's business assets from its lifestyle assets, such as the family home; or
- For couples where one or both members have their own children (as setting up one trust for each partner ensures that the interests of their own children will be protected).

Your Lawlink lawyer can discuss these arrangements with you to ensure that an appropriate structure is put in place to reflect your particular needs.

Decision 4:

How to structure the trust deed

The **trust deed** is the document which sets out the rules for how the trust will be administered. It is the most important document you will sign to establish your trust. The **trust deed** needs to be as flexible as possible while at the same time reflecting your intentions in setting up the trust. Changing a **trust deed** once it has been signed is not a simple matter. It is therefore very important to ensure that the **trust deed** is prepared correctly at the outset.

Amongst other things, the **trust deed** will specify the name for the trust. You should choose a distinctive name which will help you to maintain the distinction between your personal affairs and the trust's affairs.

Decision 5:

What other documents you need to prepare to complete your estate plan

You should view your family trust as the central pillar of your estate plan. It should be accompanied by:

- A **will** dealing with your personal estate including any debt owed to you by the trust;
- A **memorandum of wishes**; and
- **Enduring powers of attorney** documents.

When you establish your trust you should complete a new **will** to deal with:

- Your personal chattels;
- The debt owed to you by your trust, if any;
- The balance of your estate (which is generally left to the trust); and
- Your powers to appoint **trustees** and **beneficiaries** under the **trust deed**.

We also recommend that you prepare a **memorandum of wishes** to accompany your **trust deed** when you establish your trust. This memorandum should set out in detail all of your intentions for the trust and in particular cover such matters as:

- How the **trustees** should deal with the trust assets.
- How benefits should be made available to the **beneficiaries**; and
- How you would like the trust to operate after your death.

A **memorandum of wishes** provides useful guidance for the **trustees** who will operate the trust after you have died. However, such a Memorandum is not binding on those **trustees**.

You should also consider signing **enduring powers of attorney** covering both your personal property and your personal care and welfare. These documents give a third person, the attorney, power to act on your behalf in relation to your property and your personal care and welfare if you are out of the country or mentally incapable. The word "property" in this context is used in a wide sense to cover all of your personal assets. It will therefore apply to any land and buildings which you own as well as to bank accounts, vehicles and any other form of personal property.

Decision 6:

What assets to transfer

Once you have decided on the structure of the **trust deed** you can begin the process of transferring assets to your new trust. Although you can transfer any asset to your trust, we generally recommend only transferring assets which are likely to increase in value.

If you are considering transferring investment assets such as a rental property to your new trust you should obtain advice from a taxation specialist on the effects of such a transfer. If you have been claiming depreciation on your rental property then you may become liable for depreciation recovered if you complete a transfer of the property to your new trust.

A trust acquires assets that are given or sold to it, often by the **settlor** or **settlers**. Usually the assets are sold to the trust at current market value to avoid gift duty liability. As most trusts do not have cash to pay the purchase price, this sale creates a debt due to the **settlor** which is **forgiven** by a **gifting programme**. Any debt which is not **forgiven** is a personal asset and is thus available to personal creditors. The only assets protected by a trust are therefore:

- The increase in value, if any, of assets transferred to the trust over their original market value at the time of transfer;
- The amount of any **gifts** made to the trust; and
- The amount of income earned by the trust from trust assets which has not been distributed to **beneficiaries**.

It is therefore important to begin the process of transferring assets to your family trust as soon as possible so that the process of completely gifting the resulting debt can be completed as quickly as possible.

An individual can gift up to \$27,000 in any 12-month period without paying gift duty. A couple can therefore make **gifts** totalling \$54,000 in a 12-month period. In assessing this amount ordinary **gifts** (eg. birthday, Christmas etc) are usually not taken into account. **Gifts** can be made in cash or by **forgiving** all or part of an outstanding debt.

The rates of gift duty (as at June 2008) for gifts in excess of \$27,000 are:

\$0 - \$27,000	Nil
\$27,000 - \$36,000	5% on excess over \$27,000
\$36,000 - \$54,000	\$450 plus 10% on excess over \$36,000
\$54,000 - \$72,000	\$2,250 plus 20% on excess over \$54,000
Over \$72,000	\$5,850 plus 25% on excess over \$72,000

If you die before forgiving the entire debt owed to you by your trust, then you can forgive the balance of the debt in your **will**. A **forgiveness** of debt under a **will**, as with any other gift under a **will**, is not liable for gift duty.

An example

Sally and Mark established a trust in July 2002. When they established their trust they decided to transfer their family home to the trust. At that time, their home had a market value of \$300,000. They therefore sold the home to the trust for \$300,000 and the trust signed a deed of acknowledgement of debt in Sally and Mark's favour acknowledging a debt of \$300,000. Sally and Mark immediately forgave \$27,000 each of this debt (i.e. a total of \$54,000) so that immediately

following the transfer the debt was reduced from \$300,000 to \$246,000. Sally and Mark made a further gift to the trust by forgiving a further \$54,000 in July 2003 and a further \$54,000 in July 2004. As a result of these gifts, by August 2004 Sally and Mark had reduced their personal asset position from \$300,000 to \$138,000 and the trust's asset position had increased from \$0 to \$162,000 plus the increase in value of the home property between 2002 and 2004.

Administering a Trust

The importance of proper administration

Once your trust has been established it is very important that it is administered properly. Your trust achieves its objectives by separating ownership of your family's assets from you personally. If the trust is not administered properly to make this separation of ownership clear then the trust could be challenged as a **sham**. Such a challenge could be made by a business creditor, relationship partner, the IRD or Work and Income New Zealand. If such a challenge is successful then the trust assets could be treated as your own personal assets and the benefits available through the trust structure will be lost.

General administrative requirements

When establishing your family trust, your Lawlink lawyer will discuss with you the requirements for administering your trust properly. They will also be able to assist with the ongoing administrative requirements for the trust if required.

In general, **trustees** of a family trust should:

- Meet on a regular basis, at least annually, to review the trust investments and the needs of the **beneficiaries**;
- Be involved in all trust decisions and record their decisions in writing,
- Ensure that they comply with the legal obligations imposed on **trustees**; and
- Ensure that the trust meets its income tax obligations such as filing a tax return if the trust receives an income.

Trustee obligations

Under the Trustee Act 1956, **trustees** have a duty to invest prudently and to "exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others". Although many modern **trust deeds** exclude or reduce these obligations, all **trustees** are still expected to exercise a reasonable level of responsibility and prudence in carrying out their responsibilities. The Trustee Act therefore provides a useful guideline for any **trustee** when making decisions.

As a guideline, **trustees** should have regard to the following matters:

1. The desirability of diversifying trust investments.
2. The nature of existing trust investments and other trust property.
3. The need to maintain the real value of the capital or income of the trust.
4. The risk of capital loss or depreciation.
5. The potential for capital appreciation.
6. The likely income return.
7. The length of the term of the proposed investment.
8. The probable duration of the trust.
9. The marketability of the proposed investment during, and on the determination of, the term of the proposed investment.
10. The aggregate value of the trust assets.
11. The effect of the proposed investment in relation to the tax liability of the trust.
12. The likelihood of inflation affecting the value of the proposed investment or other trust property.

Although not all of these matters will necessarily be relevant in all circumstances, they do provide a useful guideline for any **trustee** making an investment decision.

A passive **trustee** who merely rubber stamps the decisions of co-trustees could be exposed to claims by **beneficiaries** for losses incurred by the trust.

Trustee liability

Trustees are personally liable for all debts incurred by the trust including tax liabilities. Where loans are arranged from banks or similar lending institutions, it is customary for the liability of **independent trustees** to be specifically excluded. It is also quite reasonable for **independent trustees** to request a **settlor** to personally indemnify them for any losses they incur as a result of their **trusteeship**.

Taxation obligations

Taxation obligations will vary between trusts and, where appropriate, **trustees** should take specialist accounting advice to ensure that the taxation obligations of their trust are complied with. One issue which is often overlooked is the need for **trustees** to resolve, within six months following the end of each financial year (i.e. usually before 30 September each year), how any income earned by the trust will be treated. The **trust income** can be:

- Distributed to all or some of the **beneficiaries** and taxed at their tax rate (there are some limitations for distributions to children); or
- Treated as **trust income** and taxed at the **trustee** rate (currently 33%); or
- A mixture of these two options.

If a resolution is not passed within the six month timeframe, the income will be treated as **trust income** and taxed at the 33% tax rate. This could mean that potential tax savings are lost.

How long can your trust last?

The law only permits trusts to operate for limited periods. The usual maximum period is 80 years. However, a shorter period can be stipulated in the **trust deed** if required. Usually, **trust deeds** provide that the **trustees** can bring forward the date of winding up.

How can you access trust income?

Distribution of **trust income** is totally at the discretion of the **trustees**. They may do any of the following:

- Accumulate and retain within the trust all or any part of the **trust's income**.
- Make **distributions** of income to any one or more of the **beneficiaries** in any proportions.
- Credit income to the current account of any **beneficiary** with the trust. The income will then be taxed as **beneficiaries'** income and will be payable to the **beneficiary** on demand.

How can you access trust capital?

Before the trust is wound up **distribution** of capital is usually at the discretion of the **trustees**. Capital can usually be paid to any one or more of the discretionary **beneficiaries**. If you are a **beneficiary** of the trust you can therefore receive **distributions** of capital if the **trustees** decide to make such a payment. Alternatively, if you are owed money by the trust, you may be able to access the trust capital by demanding repayment of all or part of the outstanding loan (subject to the terms of the loan agreement).

Can you use a house owned by your family trust?

If your family trust owns a house then the trust can make the house available to you and your family to live in, provided that you are **beneficiaries** of the trust. The trust can allow you to live in the house on the basis that you pay the rates, insurance premiums and other day to day outgoings in lieu of rent. This decision of the **trustees** should be recorded in writing and should be reviewed regularly as part of the **trustees'** regular review of the trust's investment policy.

Can a trust carry on business and invest?

Most trusts effectively give the **trustees** an unrestricted power to act as if the trust were a natural person with no limitation on what the **trustees** can or cannot do. Trusts can therefore conduct a business in the same way as a natural person. However, some care needs to be taken where a trust is conducting a business as particular legal, taxation and risk management issues can arise. Your Lawlink lawyer can discuss these with you if you intend to use your trust to operate a business.

How do trustees make decisions?

The **trust deed** can provide:

- That the decisions of the **trustees** will be unanimous; or
- That a decision of a majority of the **trustees** will be binding.

If the **trust deed** does not make either provision, the **trustees'** decisions must be unanimous. Most **trust deeds** also provide that **trustees'** decisions must be made or ratified in writing.

Relationship property issues

If you are currently living in a married, de facto or civil union relationship then it is likely that all or a significant part of your assets will be relationship property. If you and your partner separate at any point in the future then that relationship property must, except in certain limited circumstances, be divided equally between both of you. However, assets held by a trust are trust assets, not your personal assets, and as a result are not subject to this relationship property division. Transferring family assets to a family trust therefore has a significant impact on your relationship property rights. Your Lawlink lawyer will discuss these issues with you when you transfer family assets to a trust.

It is particularly important for you to understand the effects of the relationship property legislation on your family trust arrangements as:

- In some cases, transferring assets to a trust will remove relationship property rights you would otherwise have been entitled to; and
- In certain circumstances, where inappropriate dispositions have been made to a family trust, courts have the power to make compensatory judgments to an aggrieved spouse, de facto partner or civil union partner who has been disadvantaged by the trust arrangement.

Important terms

A **beneficiary** is a person, company or other entity who can receive benefits from a trust.

A **distribution** is a payment from a trust to a **beneficiary**.

Under an **enduring power of attorney** document you appoint another person to act on your behalf if you are out of the country or become mentally incapable. This power can apply to your personal property, your personal care and welfare or to both areas.

You **forgive** a debt when you acknowledge that all or part of a debt owing to you does not need to be repaid. This is a **gift** which needs to be recorded in writing.

You make a **gift**/complete **gifting** when you transfer a personal asset to another entity and receive nothing in return. You can make **gifts** to a trust by either directly transferring assets or by **forgiving** all or part of a debt the trust owes to you.

A **gifting programme** is a regular process established to transfer your personal assets to a trust by way of regular **gifts** which are made in such a way that you do not become liable for gift duty.

An **independent protector** is a person who is not a beneficiary or trustee and whose approval is required for specified **trustee** decisions.

An **independent trustee** is a **trustee** who is not a **beneficiary**.

A **memorandum of wishes** is a written summary of your goals and objectives for your family trust.

A **settlor** is a person who creates a trust by transferring assets to **trustees** subject to the provisions of a **trust deed** they have prepared.

A **sham** trust arises where a **trust deed** has been signed and assets have supposedly been transferred to the new trust but the **settlor** and **trustees** have practically ignored the trust and continued to treat all of the assets supposedly owned by the trust as the **settlor's** personal assets. This concept is explained in more detail in page 15.

A **trust deed** is the set of rules for the operation of a trust.

A **trustee** is a person appointed by a **settlor** to hold legal title to trust assets for the benefit of some **beneficiaries**. A **trustee** has legal control of the trust assets.

Trust income is the money a trust makes from the investment of its capital. It can include interest, rent and share dividends.

Trust capital is the assets of the trust and can include real estate, term deposits and share investments.

A **will** is a legal document which specifies how you want your personal assets to be administered and distributed after your death.

Where to from here?

If, after reading this booklet, you have any questions or would like to begin the process of establishing a family trust to protect your family, please contact your Lawlink lawyer.

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Ph: 06 835 8939
www.langleytwigg.co.nz

Wanganui

Treadwell Gordon
Suite 8, Wicksteed Terrace
Ph: 06 349 0555
www.treadwellgordon.co.nz

Palmerston North

Fitzherbert Rowe
65 Rangitikei Street
Ph: 06 356 2621
www.fitzrowe.co.nz

Lower Hutt

Gibson Sheat
Gibson Sheat Centre
1 Margaret Street
Ph: 04 569 4873
www.gibsonsheat.com

Wellington

Gibson Sheat
United Building
107 Customhouse Quay
Ph: 04 496 9990
www.gibsonsheat.com

Nelson

Pitt & Moore
78 Selwyn Place
Ph: 03 548 8349
Also at Richmond
www.pittandmoore.co.nz

Blenheim

Gascoigne Wicks
79 High Street
Ph: 03 578 4229
Also at Kaikoura
www.gascoignewicks.co.nz

Christchurch

Wynn Williams & Co
BNZ House
129 Hereford Street
Ph: 03 379 7622
www.wynnwilliams.co.nz

Timaru

Timpany Walton
11 Strathallan Street
Ph: 03 687 7126
www.timpanywalton.co.nz

Wanaka

AWS Legal
11 Strathmore Street
Ph: 03 443 0900
www.awslegal.com

Queenstown

Anderson Lloyd
13 Camp Street
Ph: 03 450 0700
www.andersonlloyd.co.nz

Dunedin

Anderson Lloyd
Otago House
cnr Princes Street & Moray Place
Ph: 03 477 3973
www.andersonlloyd.co.nz

Gore

AWS Legal
8 Mersey Street
Ph: 03 209 0333
www.awslegal.com

Invercargill

AWS Legal
151 Spey Street
Ph: 03 211 1370
Also at Te Anau
www.awslegal.com

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