

TRADIE LAW FACT SHEET #27

PROTECTING YOU AND YOUR BUSINESS

TRADIE LAW
POWERED BY FordSumner
LAWYERS

Should I establish a Trust?

OVERVIEW

Trusts play an important role in New Zealand society and its economy. There are an estimated half million trusts existing in New Zealand – and with good reason. Trusts, when established and managed properly, provide a valuable long-term asset management structure.

There are a range of reasons to establish a Trust, including flexibility for your family and business. A Trust can be an excellent way to protect and preserve assets while benefitting your business and family members during and beyond your lifetime.

Here we provide an overview of how a Trust operates and why it can be a valuable asset management structure for your family and business.

1. What is a Trust?

- A Trust is a legally binding arrangement or relationship between the trustees and beneficiaries. Trustees own and manage Trust property for the benefit of the beneficiaries. This arrangement is created by the settlor of the Trust who appoints these parties.
- A Trust becomes active once it is settled, or in other words once it is created by a Trust Deed. The Trust Deed sets out rights and obligations existing between the settlor, trustees and beneficiaries.

2. Who is involved?

- **The Settlor:** the person or company who creates the Trust. A settlor may also be a trustee and beneficiary of the Trust, and may have powers to appoint, exclude or remove trustees and beneficiaries.
- **The Trustees:** the people who own and manage the Trust property for the benefit of the beneficiaries. The rules governing trustees are contained in the Trust Deed and the Trusts Act 2019. It is a good idea to appoint an independent professional trustee such as your lawyer or accountant to assist in proper Trust management.
- **The Beneficiaries:** the people who benefit from the Trust, for example family members. Beneficiaries are the recipients of trust assets and income, and have enforceable rights to ensure fair consideration for them and good management by the trustees.

3. Key benefits of a Trust

- **Generational succession planning:** a Trust can exist for up to 125 years and does not end on the settlor's death. Trusts can protect assets such as investments, company shares or your family home for generations, ensuring continuity of family ownership.
- **Asset protection:** there is a legal and practical separation between your personal assets and assets owned in a Trust. When you transfer assets to a Trust, you are no longer the legal owner of them. Instead, your chosen trustees take control of those assets for the benefit of the beneficiaries. As a result, those assets are usually out of reach of personal creditors and fall outside relationship property claims, for example.
- **Tax efficiencies:** there are possible tax efficiencies in holding and distributing assets and income from a Trust to the beneficiaries, depending on your personal, family and business circumstances. Business income may be distributed through a Trust and split among beneficiaries who are taxed at lower rates. We recommend seeking specialist financial and accounting advice when considering a Trust to explore tax efficiencies.
- **Business succession:** businesses often falter or fail completely when a business partner dies or becomes seriously disabled. Alongside other key documents such as a buy-sell agreement, business owners may consider establishing a Trust to ensure a succession plan is in place should unexpected disaster strike.

Careful planning can make all the difference in the ongoing protection of assets for your business, family and future generations. A Trust can provide peace of mind that an effective long-term asset management structure is in place during and beyond your lifetime.

If you are considering creating a Trust or would like to know more about how managing assets with a Trust could benefit your family or business, get in touch so we can help.

Contact:

E helpdesk@tradielaw.nz
W <https://tradielaw.co.nz/tradie-law/contact/>

One of our team will be in touch to assist you within 24 hours.