

Family Trusts

A family trust helps provide for the ones you love and protect your assets in the future.



Trusts

This booklet gives an overview of what you need to know about family trusts and how they work. However, it's important to get the best advice you can before setting up a trust.

Public Trust is an expert in this field. Our team of lawyers, accountants and trust specialists have been helping New Zealand families protect their assets for more than 150 years.

We can help you decide if a family trust is right for your family and assist you with setting up and running your trust.



What is a family trust?

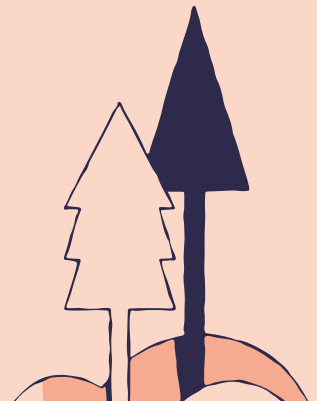
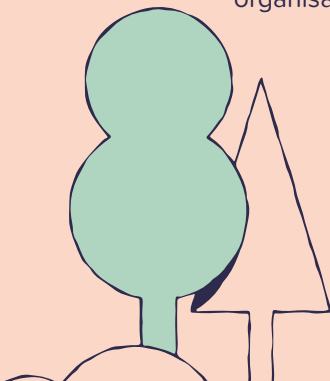
A family trust is a way to legally protect your assets and help ensure your wishes are carried out, even after you've gone.



Your major assets, such as your home and investments, can be put into the trust. This means that you no longer own them, however it is still possible for you to have a say in what happens to them and what they are used for.

Setting up a family trust is not a decision you should take lightly. If you decide later on that establishing the trust wasn't the right thing to do, it's not an easy thing to undo, so it's important to think about why you want to set up a trust and what it really means.

Speak with an expert like Public Trust. We can provide the advice and legal expertise you need. We manage thousands of family trusts every year and are New Zealand's most experienced trustee organisation.



Why should I have a trust?

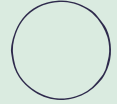
There have been some changes to the law around trusts in recent years. Some of the reasons people set up a trust now include:

- > Proactive estate planning – to help protect assets and minimize the risk of unwanted claims against your estate, provide for particular family members and for beneficiaries who are vulnerable or have special needs
- > Keep property or assets within the family for future generations
- > Protection for relationship property claims, alongside a contracting out (pre-nup) agreement
- > Creditor protection in particular situations.



How can a trust protect assets?

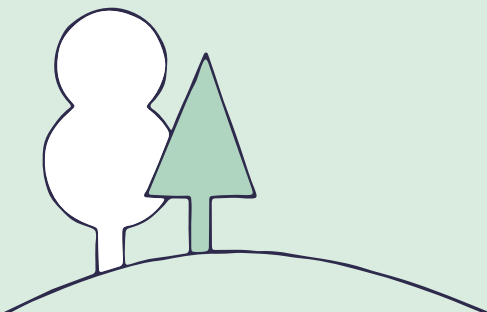
When you put your assets into a trust, you no longer own them. Therefore, a family trust can help provide some protection for your assets from any future debts or claims against your estate.



What are the down-sides?

As mentioned, the idea of a trust is that you no longer own the assets, but it also means that other people are usually involved in making decisions about these assets. Some people find this difficult to accept. You will still have a say in the way things are done, but you can't treat these assets as though they are still yours or the validity of the trust could be contested.

The Trust Act 2019 sets out how a trust must operate and who is entitled to information about the trust and its assets. This means that there are ongoing administration costs to maintain the protection the trust provides you.



Setting up a family trust

There are three parties in a trust. The person who sets up a trust or transfers assets into it is called the settlor. The people the trust will benefit are the beneficiaries, and the people who will run the trust and hold the assets are the trustees.



01

What do I need to decide first?

You need to think about what assets you want to put into the trust, who you want to benefit and who you want to run the trust.

- > You can put many types of assets into a trust, but we suggest you only include assets that are likely to go up in value
- > Anyone can be a beneficiary, but it's best if you only include people that you intend to actually benefit from the trust
- > You can choose any responsible adult as a trustee
- > We recommend you have at least one independent trustee – someone who is not a relative or a beneficiary of the trust
- > You can set up the trust and also be a beneficiary and a trustee.

02

How is a trust set up?

There must be a trust deed. After that, the settlor usually starts the trust off with a small amount, say \$10. A settlor hands assets over to the trustees to look after for a beneficiaries and these assets are then held by the trust.



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What is the trust deed?

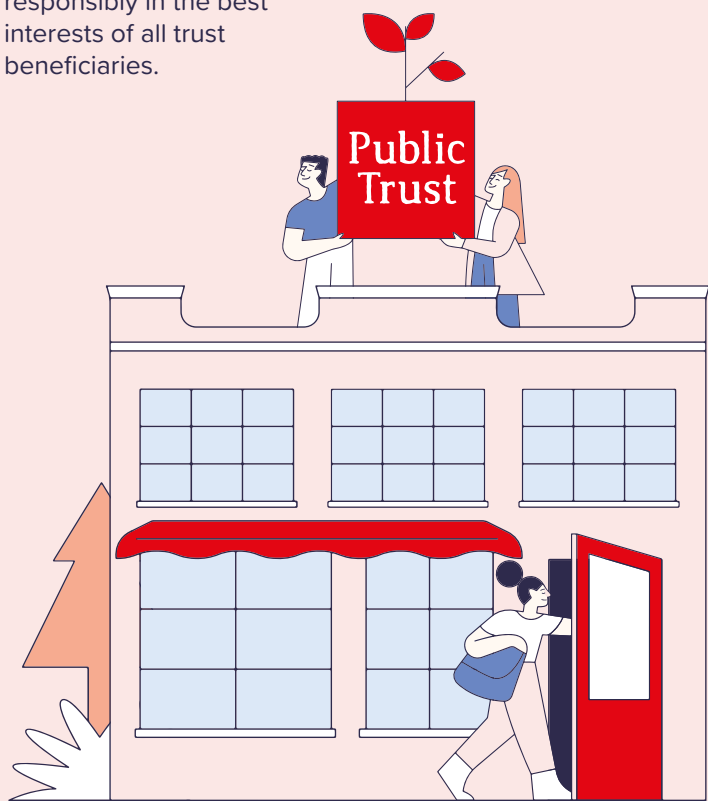
The trust deed sets out the rules for the trust that everyone must adhere to and follow.



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How is the trust run?

The trustees must run the trust and look after the assets in keeping with the Trusts Act 2019, the trust deed and with consideration of the letter of wishes – a document that outlines the settlor's goals and objectives of the trust. The trustees must look after the assets responsibly in the best interests of all trust beneficiaries.





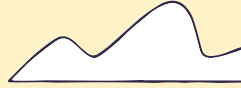
Trusts and relationship property

Under the Property (Relationships) Act 1976, if you've been in a qualifying relationship with your partner for 3 years or more (less in some cases, they are entitled to half of any relationship property if you separate or die. You can make a legal agreement (sometimes called a "pre-nup" or contracting out agreement) to share this property differently.

What happens to relationship property?

If you transfer relationship property to a trust and this disadvantages your partner, the court can in some circumstances take that property into account if you separate.

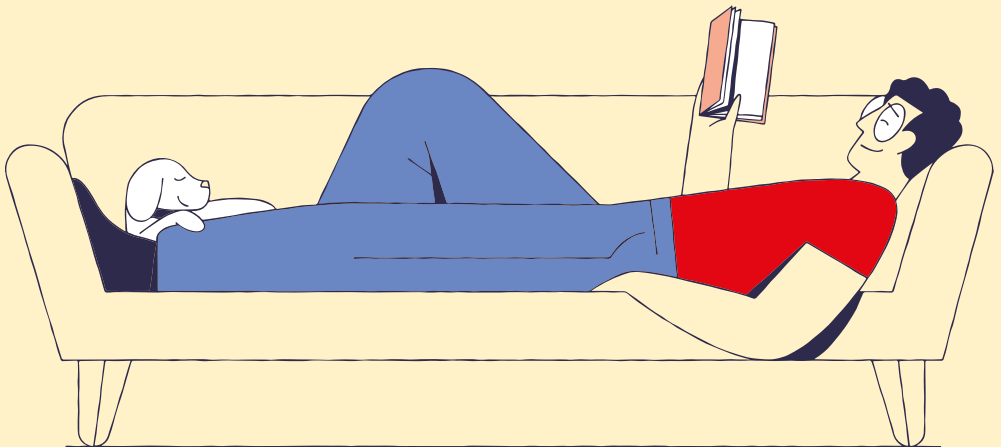
A word of caution: this is a complex topic that has only been briefly touched on here. It's important to get specialist advice concerning family trusts and their association to relationship property.



Making the trust flexible

What you tell us about your situation is important.

When we set up the family trust, we'll provide a structure that suits your intentions and is as flexible as possible. You need to tell us as much as possible about your situation so that we can take everything into account at the beginning and set up things appropriately. It can be difficult and expensive to change things later on.



Choosing the trustees

Who can be a trustee?

You can choose any responsible adult as a trustee. You can also choose a trustee organisation like Public Trust.

You'll want to choose someone with common sense who won't take sides if there's a disagreement.

We can set up the trust so that you can change the trustees, and in your will, you can nominate someone to choose new trustees after your death.

What happens if I want to change the trustees?

We can set your trust up so you are a protector, which means you can remove a trustee and appoint a new one.

What are a trustee's responsibilities?

When you ask someone to be a trustee, you are asking them to take on a certain amount of responsibility. When choosing a trustee, consider if they will be able to:

- > Make decisions consistent with the trust deed
- > Identify trust assets and manage them accordingly
- > Act carefully when making investment decisions
- > Record the trust's financial activities and keep all parties informed
- > Inform beneficiaries of trust information where required.

Trustee duties are outlined in detail on the next page.



Trustee duties

Trustee duties are set out in the Trusts Act 2019. It is important all trustees understand their duties and the terms of the trust. There are mandatory duties and default duties. The mandatory duties cannot be modified or excluded.

The mandatory duties are:

- > Know the terms of the trust
- > Act in accordance with the terms of the trust
- > Act honestly and in good faith
- > Act in the best interests of the beneficiaries or to further the intended purpose of the trust
- > Exercise trustee powers for their proper purpose and not act fraudulently or against the terms of the Trust Deed or legislation.

The default duties for trustees are to:

- > Ensure the Trust assets are invested prudently
- > Ensure trustee powers are not exercised for own benefit
- > To not act for any personal reward or profit
- > Actively and regularly review the trust, its assets, liabilities, beneficiaries and their obligations to same.
- > Avoid conflicts of interest be impartial in all trustee decision making
- > Not do anything that binds, restricts or commits future trustees for discretionary decisions
- > Act unanimously with co-trustees.

Trustees will continue to have the right to determine which beneficiaries benefit from a trust and to what extent, as well as how the trust is managed. This simply means there are increased obligations to ensure that the trustee is accountable to the beneficiaries.

If you have any questions, feel free to get in touch with our team!
0800 371 471.



Who should I choose to be a trustee?

You could choose a family friend as your independent trustee provided they act as a genuine trustee and not just 'rubber stamp' decisions.

The responsibilities of being a trustee are quite significant, particularly in the area of investments. Many people think it will save money but don't understand the difficulties that can arise. It can be hard for a friend to be truly unbiased if a dispute arises. You could be placing them in a very difficult situation.

Many people prefer to choose a professional, like Public Trust to be their independent trustee.

Increased beneficiaries' rights to information

Trustees are required to provide beneficiaries with basic trust information (unless exceptional circumstances apply) at the earliest possible time after the trust has been set up, including:

- > The fact that the person is a beneficiary of the trust
- > The name and contact details of the trustee(s)
- > The occurrence and details of each appointment, removal, and retirement of a trustee as it occurs
- > The right of the beneficiary to request a copy of the terms of the trust or trust information.

Information rights explained

This information is to be provided to a beneficiary without them needing to ask for it and it can only be withheld from beneficiaries in exceptional circumstances.

The Act provides a procedure for when a trustee decides not to provide information.

Sharing information with beneficiaries will not be a one off event, beneficiaries will need to be kept updated regarding the change in trusteeship and they are able to request further information about the trust and its assets also. The Act also sets out that a beneficiary may be required to pay the costs associated in considering any requests for further trust information.



What trusts are impacted by the Trusts Act 2019?

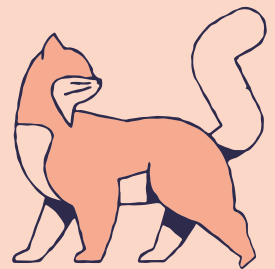


Family and Inheritance trusts are particularly impacted by the changes in the Trust Act. Estates will be impacted where there is a need to hold funds on trust for any period of time where the estate has beneficiaries under the age of 18 years or where the will specifically establishes a testamentary trust.

Impact on family trusts, inheritance trusts and testamentary trusts.

As well as the need to provide disclosure of basic trust information to all Trust beneficiaries, the changes in the law also change the age of majority (the default age that a person can inherit) and the maximum lifetime of a trust. Under current legislation, the age a person can receive their inheritance has come down from 20 years to 18 years and the maximum duration of a trust has increased from 80 years to 125 years.

These changes apply to all trusts and ongoing estates where a testamentary trust is to be established.



What are the advantages of having a professional independent trustee?

The main advantage of a professional independent trustee, such as Public Trust, is that we have the skill, expertise and impartiality to make the trust more robust and reduce the risk of it being challenged.

Public Trust can provide independent expert trustee services for the life of the trust. We can help by:

- > Providing administrative support for the trust
- > Acting objectively when balancing the interests of different family members
- > Acting prudently when making investment decisions
- > Keeping you up to date on any law changes that could affect the trust.



What it takes to administer a family trust

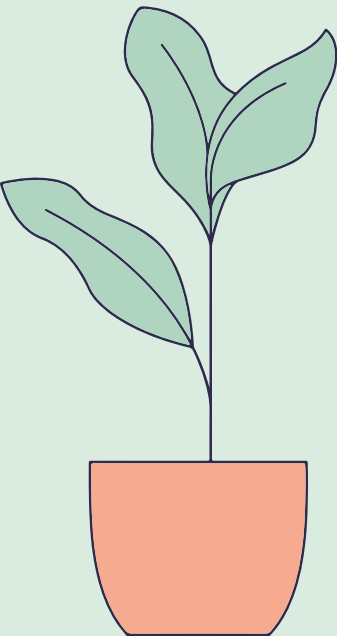
Administration

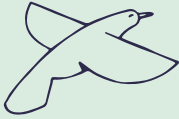
It's important to operate a trust properly, to document everything and to keep proper records.

Annual meeting of trustees

The annual meeting of trustees is part of the proper ongoing management and administration of a family trust. Trustees meet annually to fulfil their duties, including:

- > Reviewing any family circumstances that may affect the trust
- > Reviewing investments and investment policy
- > Reviewing current trust assets
- > Approving accounts (and any tax returns required)
- > Providing trust information to beneficiaries
- > Checking on any expected changes to trust assets
- > Considering distributions to beneficiaries.





Keeping records

All decisions should be recorded in a written resolution signed by all the trustees. All the resolutions, accounts and balance sheets are kept together.

Records of payments to beneficiaries and forgiveness of debt must be kept for the life of the trust.

Accounts and tax

Tax law is complex and changes frequently, meaning it is important to meet each year to discuss the trust's administration.

Public Trust can make payments, collect income, maintain records, prepare accounts and tax returns and handle the administration. The fees can be charged to the trust, or you may want your accountant to do some or all of this work.

Your will and enduring power of attorney

You will need to keep your will and enduring power of attorney up to date. We recommend you review your will at least every 3 years.

Trustee investments

The responsibilities of being a trustee are significant, particularly in the area of investments. Public Trust can draw up your trust deed to help with complications that might arise. Trustees will be able to invest in any investment they consider will benefit the trust, but they will still be responsible for investing carefully and can be sued in cases of negligence or fraud.



Why choose Public Trust?

Public Trust manages thousands of trusts and some of the country's largest charitable trusts.

When it comes to setting up a trust, experience really does count.

It's important to get it right and to make sure things are done properly.

There's a lot to think about, but we can help you decide if a trust is right for you and your family situation.

**Call us on 0800 371 471
or visit www.publictrust.co.nz**



Find out more at
publictrust.co.nz



We're everywhere you are.

Got any questions about what you've read? We can chat online, on the phone, through our online customer centre or even in person, just like the good old days.

