

# Why Have a Trust



If you are looking at going into business there are a number of good reasons why you may want to establish a family trust to hold your personal assets.

There is a cost to setting up a trust and ongoing administrative requirements so it is important that you satisfy yourself that establishing a trust is the right thing to do for you.

## If you are in Business

If you are in business and are a director and/or shareholder of a company your suppliers, landlord, franchisor, and the bank will most likely require you to enter into a personal guarantee.

If you enter into a personal guarantee you are personally liable for the performance of the company. If you are a sole trader or a partner in a partnership then you are already personally liable.

Being personally liable means that if you are unable to pay an amount to a creditor with your cash reserves then the creditor could make you bankrupt and your personal assets could be sold to meet any claims.

By establishing a trust you are transferring ownership of your personal assets to the trust. This means creditors would not be able to access them if they pursued your personal guarantee.

## Other reasons for a Trust may include:

- To protect any property you may have from any relationship property claims made by a de facto partner or spouse.
- To provide for your children without the risk of those assets being subjected to the Property (Relationships) Act 1976 on a marriage or relationship break-up.
- Possible safeguards against future Government legislation – e.g. a return of death duties or inheritance tax.
- To protect against claims which could be made against your estate under the Family Protection Act 1955, the Law Reform (Testamentary Promises) Act 1949, or the Property (Relationships) Act 1976, upon your death.

Arrangements you make under your Will are able to be challenged, however the use of a Trust may well prevent such claims being made, as your assets belong to the trust and will not form part of your estate.

- To make provision for a member of the family who has special needs.
- To provide an opportunity to create wealth within the family. A trust will continue after your death so the trust assets do not need to be sold or distributed.
- To preserve a certain asset for future generations – e.g. a beach house.
- To protect your personal assets from needing to be liquidated to pay any fines imposed on you by the government – e.g. under the Fair Trading Act 1986 and the Health and Safety in Employment Act 1992.

## How effective will a Trust be?

There is legislation which allows the courts (in very limited circumstances) to disregard the existence of a trust in certain circumstances meaning that any assets transferred to or owned by a trust would be deemed to be your personal assets. Examples include the Child Support Act 1991, the Property (Relationships) Act 1976, the Family Proceedings Act 1981, the Property Law Act 2007 and the Social Security Act 1964 (this is the Act that is relevant to a rest home subsidy).

If your company is taking out bank funding it is likely that the bank will require a guarantee from the trust. This means that the bank may have access to the trust's assets in the event of a default by the company. So while a trust will therefore give you general creditor protection; it will almost always have little or no value as a protection against claims made by the bank.

If you are looking at transferring your assets to a trust then it is important that the trust will be effective for you. We will be able to assist you to make the decision as to whether or not a trust is the right thing for you.

92 Parnell Road, Parnell, Auckland 1052 | P O Box 37851, Parnell, Auckland 1151  
P: +64 9 307 3324 | F: +64 9 307 3325 | [www.mllaw.co.nz](http://www.mllaw.co.nz) | [info@mllaw.co.nz](mailto:info@mllaw.co.nz)

**Important:** This information is provided as a guide only and is not intended to be legal advice. You are strongly recommended to consult the services of an experienced lawyer.

**We can help!**



**Marnie Blank** by phone **(09) 281 4552** or by email **marnie@mllaw.co.nz**



**Tim Lewis** by phone **(09) 972 1720** or by email **tim@mllaw.co.nz**



**Alastair Wright** by phone **(09) 307 3324** or by email **alastair.wright@mllaw.co.nz**

---

92 Parnell Road, Parnell, Auckland 1052 | P O Box 37851, Parnell, Auckland 1151  
P: +64 9 307 3324 | F: +64 9 307 3325 | [www.mllaw.co.nz](http://www.mllaw.co.nz) | [info@mllaw.co.nz](mailto:info@mllaw.co.nz)

**Important:** This information is provided as a guide only and is not intended to be legal advice. You are strongly recommended to consult the services of an experienced lawyer.

© MacDonald Lewis Law 2016 – All Rights Reserved