

## POWERS OF ATTORNEY FOR TRUSTS



By Amy Haste  
[amy@collinsmay.co.nz](mailto:amy@collinsmay.co.nz)  
 DD: 576 1412

Lloyd Collins  
[lloyd@collinsmay.co.nz](mailto:lloyd@collinsmay.co.nz)  
 DD: 576 1403

Eugene Collins  
[eugene@collinsmay.co.nz](mailto:eugene@collinsmay.co.nz)  
 DD: 576 1407

Hannah Nimot  
[hannah@collinsmay.co.nz](mailto:hannah@collinsmay.co.nz)  
 DD: 576 1409

Simone Seddon  
[simone@collinsmay.co.nz](mailto:simone@collinsmay.co.nz)  
 DD: 576 1411

Lisa Grant  
[lisa@collinsmay.co.nz](mailto:lisa@collinsmay.co.nz)  
 DD: 576 1417

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Family Trusts are fast becoming very popular for property ownership. The ownership of a Trust asset is in the Trustees names with each Trustee consenting to and authorising the purchase.

The consent of the Trustees is required for any future property decisions including when it comes time to sell the property.

This can present an issue in future when the property is sold if it is difficult to get hold of one of the Trustees, for example if they are overseas.

In order to overcome future difficulties, section 31 of The Trustee Act 1956 provides for a power to delegate Trusts. It applies if a Trustee:

- (a) Is out of or about to leave New Zealand;
- (b) Expects to be absent from New Zealand from time to time;
- (c) Is or may become temporarily incapable of performing their duties as Trustee;
- (d) Expects to be temporarily incapable of doing so from time to time.

If any of the above circumstances are likely, that Trustee may delegate to another any of their powers and authorities vested in them as a Trustee. Their Attorney would be able to act for any period they are absent from New Zealand or incapable of performing their duties as Trustee.

A Trustee cannot however appoint the other Co-Trustee to act on their behalf.

This is something to bear in mind if you have a Family Trust or are setting one up. It avoids any potential issues and delays in the future administration of the Trust. Take for example the sale of a residential property. All Trustees must authorise the transfer of ownership. While an Authority form can be signed and returned by email, there are particular signing and identification requirements which must be complied with. If a Trustee is overseas for example this can be difficult to arrange. If this causes delays in settlement, the penalty provisions in the Agreement would apply.

A Power of Attorney must explicitly authorise the Attorney to act as a Trustee. Appointing an Attorney to act on someone's behalf in their personal capacity only is not sufficient.

Should you have any further queries regarding Family Trusts or more particularly Powers of Attorney, please do not hesitate to contact the Collins & May Law Team.

**20 MINUTE FREE**

**WANT to review your Family Trust structure?**

**THEN call us and take advantage of our 20 Minute Free interview**