



By Lloyd Collins
lloyd@collinsmay.co.nz
 DD: 576 1403

Eugene Collins
eugene@collinsmay.co.nz
 DD: 576 1407

Amy Haste
amy@collinsmay.co.nz
 DD: 576 1412

Hannah Nimot
hannah@collinsmay.co.nz
 DD: 576 1409

Simone Seddon
simone@collinsmay.co.nz
 DD: 576 1411

Lisa Grant
lisa@collinsmay.co.nz
 DD: 576 1417

If you would like any of our previous newsletters or any of our free booklets on Wills, Family Trusts, Relationship Property of Business Law please email us or visit our website at www.collinsmay.co.nz

REMOVAL OF TRUSTEES BY THE HIGH COURT

The Trustee Act 1956 (“the Act”) grants to the High Court discretion to remove Trustees of a Trust. With the huge growth of Family Trusts in New Zealand, there have been a number of recent decisions setting out the principles that the Courts would follow should they choose to forcibly remove a Trustee.

Essentially an applicant must show cause, some conflict of interest or even conflict between the Trustees and/or the beneficiaries.

Take the case of Peter and Sue whose marriage has recently come to an end. During the marriage they set up a standard discretionary Trust and acquired a number of rental properties.

As a result of the separation, the relationship between Peter and Sue became very acrimonious to the point that they could no longer communicate with each other.

The mortgage loans in the name of the Trust were up for review with the Trust’s bankers. Peter did his best to communicate with

Sue in an endeavour to arrange a roll over of the loans. Sue refused to co-operate, wouldn’t answer any communications and refused to sign any bank documentation.

Peter had no choice but to make an application under the Act to the High Court to have Sue removed as a Trustee. What will the Court do?

Faced with a similar facts situation as set out above, a recent High Court Judge removed **both** husband and wife as Trustees of the Trust. The reason of the Court is that because of the acrimony caused by the marital breakdown, neither of them would be in a position to provide impartial and even-handed management of the Trust assets. The Public Trust was appointed as the sole independent Trustee.

20 MINUTE FREE

WANT to review your Family Trust structure? THEN call us and take advantage of our 20 Minute Free interview