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SIGNING AS AN ATTORNEY FOR A TRUSTEE: THE MISCONCEPTION

Do you have a Trust and Powers of Attorney in place? If so you may think all loose ends are tied up and no matter what happens to you, all your affairs are taken care of. Unfortunately this is not the case.

The Problem

A common misconception is that someone can sign as an Attorney in any circumstance. However you cannot grant a Power of Attorney in your capacity as a Trustee. If you have a Power of Attorney in place, this power does not extend to Trust matters.

A Power of Attorney can only sign on behalf of a Trustee in two very limited circumstances. Firstly when a Trustee has gone overseas temporarily and secondly, when the Trustee is going into hospital for surgery for example.

This misconception is starting to have real consequences when it comes to dealing with Trust property when one Trustee loses mental capacity. Take for example a Trustee who loses mental capacity and with it, the ability to sign Trust documents. If the remaining Trustee wishes to sell any Trust property, they

must apply to the High Court for a Vesting Order to get the other Trustee taken off the title. The cost of this order is in the vicinity of \$10,000.00 or more.

The Solution

Our recommended solution is to incorporate a Trustee Company as the sole Trustee of your Trust. This means that the Trustees would be appointed Directors and any one Director can sign documents on behalf of the Trust. Directors can also be appointed or removed by a simple Shareholders Resolution.

When a Director dies there is no need to register any conveyancing documents and the added advantage is that applying for Probate may not be necessary. This ultimately means a saving to your Estate.

If you would like to know more about Corporate Trustees please contact one of the team at Collins and May Law.

20 MINUTE FREE

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