



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

**Lloyd Collins**  
[lloyd@collinsmay.co.nz](mailto:lloyd@collinsmay.co.nz)  
 DD: 576 1404

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

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

**Freya Boyd**  
[freya@collinsmay.co.nz](mailto:freya@collinsmay.co.nz)  
 DD: 576 1409

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## NEVER BE AN INDEPENDENT TRUSTEE

Most Family Trust Practitioners recommend that you have an Independent Trustee. Many Trust Practitioners will operate either their own Trustee Company or set one up for each client's Trust.

Some people prefer to use a close personal friend or family member to be their Independent Trustee.

**Our advice is, you should never be an Independent Trustee in your personal capacity under any circumstances.**

The reason for this is it exposes you to a number of risks you may not be aware of.

The following is an illustration of one of those risks:

Before the financial crisis in 2007 an accountant and solicitor accepted positions as Independent Trustees for a client's Trust. The client was not a Trustee.

Over a period of time the client, who ran a general contracting business, used the Trust's property to essentially dump fill onto the land. He did not apply for a Resource Consent and continued to use the Trust's property as a dump site.

Following the global financial crisis the client's general contracting business failed. The client's Bank had served notice in relation to the mortgage over the Trust's property. The pressure became too much for the client and he decided to move to Australia to avoid the fall out from his business failure.

This left his lawyer and accountant as the only owners of the Trust's property. Whilst the Bank documentation included a Clause limiting their liability to the

assets of the Trust the Trust faced a new challenge. The Local Council served notice on them in relation to the illegal dumping of fill on the property without a Resource Consent. There was such a large amount of fill on the property it was estimated by the Council to cost half a million dollars to remove that fill from the property.

The lawyer and accountant responded to the notice to advise that they were simply Independent Trustees of the Trust however the Local Council said they had no choice but to pursue them as they were the only named land owners on the title. The matter ended up before the Court and the accountant and lawyer were ordered to pay the cost of the removal of the fill. As there is no ability to obtain funds from the Trust they were held to be personally liable and had to pay it out of their own funds.

This case illustrates the reason why you should never be an Independent Trustee in your personal capacity. We recommend that an Independent Trustee Company be incorporated and you should simply become a Director of that Company and the Company will be the Independent Trustee.

If you are an Independent Trustee of someone's Trust in your personal capacity and would like to discuss these issues with us please feel free to contact a member of our team.

**20 MINUTE FREE**

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