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REVIEWING TRUSTEES

As you approach retirement, it is essential to review your Trust documentation.

As we get older, unfortunately we run the very real risk of losing capacity to administer our own affairs. As dementia has increased by 29% from 2011 to 2016, you need to make sure you have provided for this possibility because if you wait until it happens, it will be too late.

You may be surprised to find that an Enduring Power of Attorney (EPA) will not enable you to sign documents in your capacity as a Trustee.

It is easy to think that this may not happen to you and not worry about it. However, by the time you react to such an occurrence you or your spouse/partner may have a stroke or develop dementia. That could leave you or your spouse/partner without capacity and therefore unable to sign documents.

The conundrum exists as the law as it currently is only covers persons who are physically incapacitated, the law has not made provision for persons who are no longer mentally competent if they are a Trustee.

Removal and Appointment of Trustees

When changing Trustees you must also transfer property into the name(s) of new Trustee(s).

For most forms of property a Deed of Retirement and Appointment of New trustee is usually sufficient to change ownership.

Ordinarily, a Trust Deed will specify who has the power to remove and replace Trustees. The difficulty arises when you have to remove the name of the person who has lost capacity from the certificate of title. The only way of rectifying it is to apply to the High Court to do so. Obviously, this involves a costly process.

One easy solution is to have all Trustees resign and replace them with a single Trustee Company.

Those Trustees resigning can be appointed Directors so in effect the actual decision making powers are the same, except, they are exercised as Directors of the Trustee Company instead.

The great advantage of this is if one of the Directors loses their mental capacity, the Company does not lose capacity and the Trust can carry on functioning. An additional advantage to this set up is any time a Trustee is changed it is a simple matter of passing a Shareholders Resolution and updating the Company records.

There is no need to go to the expense of conveyancing just to change a Trustee. If you would like to discuss whether this particular set up would suit you, please contact one 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**