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Next Issue: Removal of Children from New Zealand

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FAMILY TRUSTS - TRUSTEES DUTIES

Trustees have a crucial role in the operation of a Family Trust. Their responsibilities include making Trust decisions, administering the Trust and distributing funds to the beneficiaries.

Trustees hold property on the Trust's behalf. When a Trust purchases real estate for example, the Trustees names are registered on the certificate of title for the property.

As the Trustees have significant control over the Trust's assets, they have certain duties to ensure the Trust is run properly and efficiently.

These duties include:

- (a) Ensuring the Trust Deed is complied with. The Trust Deed sets out the powers of the Trustees and what the Trust may or may not do. Appointing a professional as a Trustee provides an extra check to ensure this requirement is met;
- (b) Considering the beneficiaries and providing them with information if requested. While the Trustees do not have a legal obligation to provide for the beneficiaries, they do have to consider them when making Trust decisions. Trustees have discretion in deciding how much is given to the beneficiaries and when a distribution is made.

Before distributing funds, the Trustees should also consider the settlor's intentions. This is the person or people who set up the Trust. A Memorandum of Wishes provides who the settlor wants the

Trust's assets to go to in the event of their death. While this is not a legally binding document, it should be considered before any distributions are made;

- (c) Acting in the best interests of the beneficiaries. This includes acting fairly towards all beneficiaries. Trustees must actively review and deal with the Trust's assets so as to benefit the Trust. For example the Trust's funds should not be placed in a high risk investment, especially if the Trustees have not first obtained independent financial advice;
- (d) Not profiting from the Trust. In order to ensure they are acting in the best interests of the beneficiaries, Trustees should not benefit personally from the Trust unless specifically authorised by the Trust Deed;
- (e) Acting prudently on behalf of the Trust. Trustees must ensure all legal requirements are met when entering into any transaction on behalf of the Trust. For example if a Trust asset is not sold at its true value, the Trust could become subject to future tax liability.

It is advisable that all Trustee decisions be recorded in writing in the form of a Trustee Resolution.

Should you have any further queries regarding Trustees duties, please do not hesitate to contact the Collins & May Law Team.