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MANAGING TRUSTS AFTER SEPARATION

An issue that often arises after a couple separates is how their family trust or trusts are dealt with.

If a couple have two mutual trusts whereby each partner is a trustee of one trust (usually with an independent trustee), the trusts can continue to exist and will each retain their assets.

If there is only one family trust where both partners are trustees, the trust deed may contain a compulsory resettlement clause setting out that in the event of separation, the trust's assets will be resettled onto new trusts.

Two new trusts will be established with each partner being a trustee of one trust. The partners can appoint anyone as additional trustees of their trusts, except each other.

How the trust's assets are dealt with in this situation will depend on when the assets were transferred to the trust and the status of the assets prior to the transfer.

If the gifting programme has not yet been completed, the resettlement could be dealt with in two ways:

1. The assets owned by the trust are resettled on two new trusts but the debt due back to the couple is repaid by the trust prior to resettlement. Once resettlement occurs, the partners would readvance the loans to their trusts and resume the gifting programme for the new trusts.

Resettlement is completed and the couple would continue gifting to the old trust.

The first option can be illustrated in the following example. Jim and Mary transferred their home to a family trust three years ago. The trust borrowed \$281,000 from each of them to complete the purchase. After they separated, Jim and Mary both went to separate lawyers. An agreement was reached to resettle the assets 50/50 on two new trusts. The house was placed on the market and sold by the trust. The trust repaid the mortgage and repaid Jim and Mary's loans of \$200,000 each, being the balance of the loans after 3 years of both of them forgiving \$27,000 per year. The trust was left with \$200,000 cash and it resettled \$100,000 to each trust. Jim and Mary both readvanced \$200,000 to their new trusts and started new gifting programmes to forgive the debt.

Of course this would not have been possible if the parties had not reached an agreement regarding the resettlement of the trust's assets. There was also no court action taken so there were no court orders to be complied with.

- **The next issue covers -**
Consumer Guarantees Act -
Supply of services by
Davina Rowan