

• Contacts

NEWSLETTER

Volume 2 2008

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If you would like any of our previous newsletters or any of the our free booklets on Wills, Family Trusts, Relationship Property of Business Law please email us.

THE IMPORTANCE OF TRUSTEE RESOLUTIONS

by Daniel Mumford

Trustees often forget their role in the management of a Family Trust. The most common area needing improvement is the drafting and passing of Trustee Resolutions.

John and Jane set up a Family Trust four years ago and sold their family home to it. At the time John and Jane were the only Trustees. Since then the value of the property has increased significantly and John and Jane have borrowed against the equity in the property to carry out improvements such as adding a new bedroom, renovating the bathroom and kitchen, and spending \$120,000.00 on the house. They later decided to sell the house and buy a new one, but they did not use the same solicitors for the sale of the house as those who set up the Family Trust. John and Jane did not tell the solicitors selling the house about the Trust.



About a year after the sale, John and Jane came to see us. We reviewed their Trust and advised them that the Trust is in danger of not being recognised. The main reason for this is that there are no records of any Trustee decisions, such as granting a mortgage over the property, borrowing money against equity in the property, carrying out alterations, selling the property, and buying a new property. In short, the Trust would not be recognised as being legitimate as John and Jane have made all the decisions themselves as if they owned the property, and not as if it was owned by a Trust. As

Trustees, John and Jane should have prepared and passed resolutions for all matters relating to property, such as improvements, finance, and buying and selling before going ahead with them.

We advised John and Jane that an independent trustee should be added to their Trust as it increases its integrity by ensuring that all dealings with Trust property require the approval and consent of an independent person or entity. We assisted John and Jane by helping their Trust keep better records for the future. Many resolutions can be done by Trustees themselves, but it is a good idea to get a professional to advise on the proposed action and form of the document.

If you have a Trust and want further advice to make sure it is operating properly, please feel free to contact us.