COLLINS & MAY | LAW

NEWSLETTER

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THINKING ABOUT WINDING UP YOUR FAMILY TRUST?

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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 or Business Law please email us or visit our website at ***www.collinsmay.co.nz***

It's not surprising with all of the changes coming in with the introduction of the New Trusts Act 2019 next year that many people are considering winding up their family trusts.

This is a good time to take the opportunity to review whether it is still worthwhile having a family trust. Some of the reasons that you set the trust up in the first place may no longer be there for example, moving into retirement and there is no longer any business risk or you may not need to keep your options open for eligibility for the residential care subsidy in the event you are assessed as requiring full time rest home care in future.

Before rushing into any hasty decisions, you need to be aware of the implications in winding up your family trust.

Residential Care Subsidy

If you require full time rest home care in future, you can apply for the residential care subsidy whereby the Government covers the cost of your care. In order to qualify, your assets must not exceed the asset thresholds which are currently (as at July 2020):

i) $129,423.00 (excluding your house and vehicle) where one partner is not in residential care; or
ii) $236,336.00 including your house and vehicle.

If you wind up the trust and distribute assets to yourself this will increase your assets. This may affect your entitlement to the residential care subsidy.

Inheritance

If you pass away your wealth will be in your personal name and not in your trust. Your assets will be sold and distributed to the beneficiaries named in your Will. Wills can be challenged for a number of reasons such as excluding (or not providing adequately for) certain family members such as spouses and children or where a testamentary promise was made. Trusts cannot be challenged for these same reasons.

Relationship Property

In some instances winding up your family trust and transferring an asset into your personal name may entitle your spouse or partner to a share in the asset which they may not otherwise be entitled to for example if the family home is transferred into your personal name.

Likewise if you pass away and your children receive an inheritance from your estate this could be converted to relationship property. This means half of the inheritance will go to your child's spouse or partner on separation.

Tax Implications

You should discuss these with your accountant.

Each person's circumstances are different. There are still a number of advantages in having a family trust but depending on your circumstances you may nevertheless still wish to wind it up.

Please feel free to contact us for advice in relation to your particular circumstances prior to the introduction of the new Act from 30 January 2021.

20 MINUTE FREE

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