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Independent Trustees

By Paul May



As we often say to clients, it is usually a wise move when establishing a Trust to ensure that the Trustees have some independence from the beneficiaries.

This usually means that people appoint an independent Trustee, that is, somebody who is not also listed as a beneficiary.

The independent Trustee can be a solicitor, accountant, family friend or some other relative who is not a beneficiary.

In some cases, these Trustees do not realise the importance of the position they have agreed to take.

An independent Trustee has exactly the same obligations towards beneficiaries as any other Trustee.

The fact that you are an independent Trustee does not mean that you can "rubber-stamp" the decisions of the other Trustees.

An independent Trustee is just as liable for Trustee debts or for bad Trustee decisions as all other Trustees.

This is definitely one area where ignorance is not accepted as an excuse to avoid Trustee liability.

For example, if you were a Trustee of a Trust that was involved in a business and the business failed, then your lack of knowledge of the business affairs would not give you an excuse if the Trust owed money to any business creditor, for example, a business supplier.

Lack of knowledge is also no excuse if one of the beneficiaries wanted to sue the Trustees for something such as not managing the Trust assets properly or not giving the beneficiary the proper amount of consideration when making a

decision to distribute Trust assets.

Obviously, whenever the Trust enters into any transaction which involves borrowing money, then the independent Trustee should make sure that there is a limitation of liability clause included in the documents. The most common situation where this arises is for Bank loans.

However, it can also arise where a Trust enters into a contract to, for example, purchase a house or building or enter into a lease etc.

Accordingly, if you are an independent Trustee of any Trust you should make sure that you are fully aware of all of the Trust business. You should not be afraid to ask questions and you should make sure that regular Trustee meetings take place.

The next issue of the Collins & May Law newsletter covers the topic of Valuation Date for Relationship Property by Lloyd Collins.