

What family trusts do

What are family trusts for and when you might need one?

Trusts are for the protection of assets.

Money, property and investments belonging to a trust are held separately from those for whom the trust has been established (the beneficiaries).

Here are some examples of the kinds of protection available:

■ **Creditors.** If you are a sole trader or a professional without limited liability, your home and other significant assets, if placed in trust, could be protected from creditors or from anyone claiming damages from you for negligence or a mistake made by you.

■ **Relationship breakdowns.** Trust assets are not "relationship property" available for equal division between spouses or de facto partners if they separate.

Though there are exceptions that may allow claims to be made against trust property, a trust can still be a useful tool for protecting property from the consequences of a relationship breakdown.

In many instances, additional agreements between a couple may also be required for adequate protection.

■ **Protecting children.** Transferring assets into a trust for children can provide protection from claims by a child's partner, de facto or married.

As well, a trust can protect spendthrift children from themselves by preventing them from get-



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ting their hands on capital that they might waste.

■ **Special needs children.** A trust is probably the best way to protect funds set aside for the support of a special needs child.

■ **Challenges to a will.** Assets put into a trust, where the value has been fully disposed of by a gifting regime, are no longer the personal property of the testator of a will. As a result, those assets are as a rule protected both from family protection claims and from changes to testators' wishes being implemented after their death.

■ **Rest home care.** If assets have been held in a trust for a sufficient time and gifting has been completed within required limits, they are unlikely to be assessed as part of an application for a rest home subsidy, so remain available for the family.

As well as the above, trusts can sometimes incidentally reduce income tax.

However, you need to be careful

that tax evasion is not the purpose of setting up the trust or that the trust is not seen by IRD to have that purpose.

For a trust to provide adequate protection and to withstand scrutiny if challenged, both the set-up and the ongoing operation of the trust will be crucial. Expert advice is therefore essential.

Following the article on workplace restructuring, B asks: If I am told the new position offered will come with an unspecified increase in salary, can I enforce that if no extra salary is given, and can the job description be changed without agreement?

Unless you agree on the amount of the new salary, you cannot enforce any specific salary increase, but you could bring a grievance claim for a failure to act fairly during the bargaining process.

This will not result in a salary increase, but compensation may be payable for the disadvantage you suffered.

If the job description is in your employment agreement, it can be changed by consent, or if the agreement allows changes to be made by your employer.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733 484. If you have a legal inquiry you would like discussed in this column, email aknowsley@raineycollins.co.nz.