A Family Trust

The concept of a trust is centuries old and dates back to medieval times. Once the preserve of the wealthy family trusts are becoming increasingly common as more people endeavour to protect their assets. For those people a trust is a form of insurance which provides protection against life's uncertainties.

Although individual trusts can be complex, the basic structure is very simple. You decide what assets you wish to transfer to the trust and gift the value of those assets to the trust at the rate of $27,000 a year. ($54,000 for a couple). For example, if your house is worth $270,000 it will take a single person nine years and a couple four years to gift the house to the trust. In the trust deed you nominate the trustees and potential beneficiaries. You can be a trustee but not the sole trustee.

The most common form of trust is a will or testamentary trust. When you make a will you appoint one or more persons to act as your trustee and then give instructions on how the trustee is to divide your assets among the beneficiaries named in your will.

The major difference between a trust created by a will and what is commonly called a family trust is that a trust created by will does not commence until the date of your death whereas a family trust commences on the date you sign the trust deed and transfer your assets to the trust. If you keep this similarity in mind you will find it easier to understand the comments that follow.

The creation of a trust has far reaching consequences and we will now look at what a trust is, the position of a trustee, the powers and duties of a trustee and where the settlor and beneficiaries stand in relation to each other.

It is very important to understand what is involved so as to avoid the pitfalls which can arise if a trust is not administered correctly.

What is a trust?

A trust may be defined as:

> "***An equitable obligation, binding a person, (the trustee) to deal with the assets over which the trustee has control, (the trust property) for the benefit of persons, (the beneficiaries) of whom the trustee may be one, and any one of whom may enforce the obligation***".

If we consider each part of this definition we can learn a great deal about the way in which a trust works.

A trust is an equitable obligation

This implies that the trustee is always registered as the legal owner of the property. For example, on the certificate of title for a property you will find only the name of the trustee as owner with no indication that the trustee is not the real owner. The trustee is the legal owner of the property and as far as the public is concerned the trustee can do what the trustee likes with the property.

Binding a person (the trustee)

The trustee, although the legal owner, has a clear obligation to deal with the property in a certain way. This obligation is set out in the deed of trust which states the name of the person creating the trust, (the settlor) the names of the trustees and the potential beneficiaries. The trust deed also sets out the way in which the beneficiaries will share the income and capital of the trust and the powers the trustee has in dealing with the trust property. It is the deed which confers on the beneficiaries their rights in the trust property and their right to call a defaulting trustee to account. A trust deed is very seldom complete in itself. For example, both the trustees and the beneficiaries have rights given to them by the Trustee Act.

Most trusts in New Zealand have private trustees. Some people however prefer to appoint an independent corporate trustee and the reason for this is that trusteeship appointments give rise to personal liabilities. With the introduction of the Trustee Amendment Act 1988 these are now more onerous, and they create problems, not just for the trustee but also for the beneficiaries.

Problems can occur where there is a trustee who has failed to act properly in the administration of the trust, but who has taken proper advice with his or her personal position and no assets are held in the trustee's private name. At the very point in time when you require the trustee to front up and make good a loss, or arrive at a form of compromise, there is no accountability as the trustee may not be worth suing.

While no corporate trustee wishes to set up in business to be sued, it is an inevitable consequence for any institution specialising in that field. A corporate trustee must therefore ensure that such failures are kept to a minimum.

In deciding whether or not to have private trustees you must ask yourself if you would sue or ask a personal friend or relative to make good a loss in a trust? If the private trustee is a member of the family or a close personal friend, and inadvertently causes a loss or neglects to act and causes a loss, how comfortable will your family be in seeking legal redress from that person? Quite simply, trusteeships are appointments of significance that create legal obligations. It is comfortable to appoint a personal friend or relative but how good will that appointment be if something goes wrong.

Independent trustees must be open and accountable, and it is expected that over time increasing use will be made of their services. ***In our opinion you should appoint*** at least ***one independent trustee***. Whether that independent trustee is a corporate trustee, a professional person or a business associate is one of the most important decisions you must make.

To deal with property (the trust property)

Practically any property can be made the subject of a trust. From 1 October 1988 the previous restrictions on a trustee's powers of investment were removed and the Trustee Amendment Act now authorises a trustee to invest in any property.

The Trustee Amendment Act also saw the introduction of the prudent person rule.

Section 13(b) of the Trustee Amendment Act states that "***a trustee exercising any power of investment shall exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others***".

Prudence is a test of conduct and not of performance. It is demonstrated by the manner in which trustees go about developing investment strategies and the implementation of investment decisions taking into account the circumstances of each trust. Prudence is determined by the process of investment management and the application to the trust rather than by labelling investments as either prudent or imprudent. A particular investment may be prudent for one trust but totally imprudent for another.

Trustees have frequently sheltered behind expert advice and although such advice may be used as a defence to any claim of wrongful investment, the trustee is not altogether absolved of responsibility. The only exception to this is where a registered valuer is required to provide a valuation of property for mortgage lending purposes in which case the trustees may lend on the property up to the amount recommended by the valuer. In all other cases, trustees continue to have the final responsibility for investment decisions and are not permitted to delegate these, except in very special circumstances.

The Trustee Amendment Act sets out a number of factors which trustees must take into account when making investment decisions. These include the need for diversification, the need to take into account any differing entitlements of the beneficiaries, the terms of the trust, and the personal and tax circumstances of the beneficiaries. Trustees are not permitted to speculate, and any investment must be made on the basis of a permanent disposition of funds.

This does not necessarily prohibit risky investments, however, it is generally accepted that the safety of the capital must be paramount.

When trustees are seeking advice, it is important for the advisor to be provided with full details of all trust assets and the circumstances of the trust.

In particular the trustees should brief the advisor on relevant information in respect of the factors listed in the Act which need to be taken into account in developing the investment strategy and selecting individual investments. It is also important that advisors give detailed consideration to these factors when giving advice so that if a claim is subsequently made, the trustee is able to use this in defending any action subsequently made by the beneficiaries.

For the benefit of persons (the beneficiaries) and of whom the trustee may be one

This phrase emphasises the essential point of a trust, that it is for the benefit of the beneficiaries and no one else. It is not for the benefit of the trustee who is only entitled to out of pocket expenses provided they are reasonable. A professional trustee, such as an accountant or solicitor, is also entitled to charge for professional services rendered to the trust provided the necessary authority is contained in the trust deed.

At law any person can be a beneficiary of a trust whether that person is alive or as yet unborn. A well-drafted trust deed usually provides for a wide range of potential beneficiaries. Who you include as beneficiaries is one of the most important decisions you must make.

Anyone of whom may enforce the obligation

This feature is unique to the law of trusts. The only persons who can enforce the obligations binding the trustees are the beneficiaries. What is more, any one of the beneficiaries can bring an action without the agreement of the others, and even against their wishes.

Any act or neglect on the part of a trustee which is not authorised or excused by the instrument or by law is a "breach of trust"

Where a breach of trust occurs the trustee must put the trust property back into its former position.

Summary

To summarise, for a valid trust to exist there must be present certain minimum requirements ("***the three certainties***"):

Intention: Language or conduct which shows a clear intention to create a trust.

Subject matter: It must be clear what property is to be held subject to the trust.

Object: A discretion given to a trustee to select beneficiaries will be valid if the beneficiaries from which the trustee may choose are clearly designated.

Provided a trust satisfies the three certainties there is no prohibition on a person settling property on a trust of which s/he is a trustee and also ***one of a number of discretionary beneficiaries***. However, if a sole person is given unlimited powers over trust property by a settlor, there may be a possibility that no trust exists. A requirement for two trustees to exercise the powers cures this deficiency.

When to form a trust

It is an unfortunate fact of life that most people do not plan for the future with the result that we are usually asked for advice about a trust by persons in their middle age who are financially successful.

Having acquired a comfortable house, a holiday home or a boat and a selection of investments they realise that they have a lot to lose if something goes wrong. This realisation can be triggered by a wide variety of events, for example, the failure of a friend's business, a professional colleague being sued or the introduction of a new law such as the De Facto Relationships (Property) Bill. Whatever the reason, if you accumulate assets in your name and you wish to avoid payment of gift duty, it will take time to dispose of those assets and it will inevitably cost more in legal fees. ***All of this can be avoided by anyone who earns, or who has the potential to earn, a high income forming a trust when s/he begins to accumulate assets***. By the simple device of accumulating assets in the name of a trust instead of in your personal name you will protect those assets against a wide variety of potential claims.

We will now look at some of the more common reasons for forming a trust.

Saving for your retirement

Every week you go to work and do your job. At the end of the week you receive some money to compensate you for the hours you have worked. Who gets the lion's share of that money? **You don't!** If that were true you would have a bulging bank balance. But if you don't get the bulk of the money where does it go?

Most people work hard at their jobs and yet when it comes to the end of the week they pay everybody **BUT** themselves. Heaps of dollars go the landlord, lending institution, food market and all sorts of other business people, but if you are like most people, you will keep very little for yourself. Think about that. ***What is the point of working for 50 years if most of what you earn ends up in somebody else's pocket***.

Saving is like dieting. It won't make any difference to your weight if today you eat a Big Mac, large french fries and a drink coke but eat the same meal every day and ***after a few weeks*** you will notice a big difference.

It's the same with savings. Saving **ALL** of this week's pay packet, or frittering it away won't change your financial situation. ***It is the habit of saving a little each week that will make the difference***.

It is human nature to spend all of our income and yet if we don't have it to spend we don't miss it. **The ONLY way to save is to have the amount you wish to save taken out of your pay packet by automatic deduction**. If you try to save what is left over at the end of the week there is seldom anything left.

All over the country there are families who are living next door to one another enjoying similar standards of living. Yet one family is creating financial security by having a savings plan and the other is not. They are living the same lifestyle **NOW**, but things will be very different when they reach retirement. One family will exist on the pension while the other will be enjoying their retirement with ample money, investments and an independent lifestyle. For example $100 invested every month would, at an average return of 5% after inflation, turn into nearly $16,000 after 10 years, over $27,000 after 15 years, nearly $42,000 after 20 years, over $66,000 after 25 years and nearly $84,000 after 30 years. ***By implementing a savings plan through your trust you will be able to enjoy your retirement***.

Asset protection

Many clients face potential liabilities arising from:

- Civil litigation
- Directorships
- Trusteeships
- Personal guarantees
- Creditors

Asset protection is a key area for the use of trusts and the prudent business/professional person who faces such liabilities should re-organise his/her assets to limit the impact of such a potential liability. Any action taken to avoid creditors can be attacked under existing legislation, but there are proper legitimate planning methods available using trusts as vehicles with assets being sold to the trusts.

Protecting against claims in relation to wills

Wills can be challenged because:

(a) The testator (person who made the will) lacked testamentary capacity at the time the will was made;

(b) In making the will there was a breach of the Family Protection Act 1955; or

(c) The testator made a promise to somebody in his or her lifetime to leave them property by will, but did not honour the promise in the will (Law Reform (Testamentary Promises) Act 1949).

The most common form of claim is under the Family Protection Act 1955. A person can make a claim if you fail in your moral duty to provide for a:

- Spouse;
- Child;
- Grandchild; or
- Parent or stepchild who you are maintaining at the time of your death.

The Court will decide if a breach has occurred, and will, if it finds that you have failed in your moral duty, modify your will.

In deciding the claim the Court may do something with which you would have violently disagreed and may, for example, effectively penalise beneficiaries who you regard as being far more deserving than the claimant.

A very effective method of preventing your will from being challenged is to transfer your assets to a trust. When you transfer an asset to a trust you effectively remove the asset from your estate and the asset cannot be claimed through the medium of a Family Protection Act 1955 application. Care must be taken to ensure that any debt created as a consequence of the transfer of the asset is effectively gifted or structured in such a way as to make it impossible for it to be treated as available for distribution from your estate at the time a claim is made.

Matrimonial, civil union and defacto property claims

The Property (Relationships) Act 1976, which encompasses marriage, de facto relationships and civil unions, grants the parties the rights to a claim against their ex-partner or spouse's property after a separation. The definition of property is broad and includes directly owned assets and any entitlement to assets from an estate.

For de facto couples to share equally in the relationship property, they must have been living together for a least three years, and have been at least 18 years old before the three year qualifying period begins.

If you buy a house and invite a partner to live with you in a de facto relationship, the relationship lasts three years and then comes to an end, your partner may make a claim on the house.

Securing family assets in a trust provides an effective way to safeguard both your own and your family's interests. Trusts also guard against changing legislation and give continuity over several generations.

A trust can make a loan to a son or daughter to buy a house. The effect of this loan is that your child will reduce his or her equity in the house. This is more effective than distributing capital or income to the child. Particularly because capital and income distributions form part of the child's property, and may be subject to a claim.

Generation skipping

The impact of future matrimonial, civil union and de facto property laws has also had an effect on the attitude of individuals concerning claims against future generations. Formerly, the focus was rather on the persons concerned and while their families were young, those families as well.

Today people are taking a much broader view of the function of a family trust so as to provide for protection throughout generations. In earlier times, it was quite common for it to be suggested to trustees that on the death of the principal clients the trust be wound up and the assets distributed to the children. Today it is much more common to find trustees being requested to ensure, when the principal beneficiaries have died, that the assets of the trust are resettled on new trusts for the benefit of individual children and their families for as long as the law permits. The reason for this is to try and provide an additional layer of protection for children and remoter issue against claims which, their parents now having recognised as applying to them, may apply to those children as well.

The following is a typical scenario:

A married couple, with three children called David, Stella and Claire, form a trust to which they transfer all their assets worth $750,000. On the couple's death the children are aged 48, 45 and 38 and the assets have increased in value to $1,200,000. As we noted above, in earlier times, it would have been common, on the death of both parents, for the trust to be wound up, in which event David, Stella and Claire would have each inherited $400,000. Having received their inheritance however, David, Stella and Claire are each faced with the same concerns that caused their parents to set up their trust. When confronted with this problem it is now more common for David, Stella and Claire to ask the trustees not to wind up the trust but to continue administering the trust for their benefit (if they are all in agreement) or, if they require separate trusts, to ask the trustees to form three separate trusts, one each for David, Stella and Claire and transfer $400,000 to each trust. The beneficiaries of each trust will be David, his children and grandchildren, Stella, her children etc. David, Stella and Claire can use the income earned on the capital and, if the need arises, can supplement the income by using some of the capital. In this manner David, Stella and Claire each protect their inheritance.

When considering this issue it is important to keep in mind that the maximum term for which assets can be protected is 80 years.

Tax planning

Tax savings have traditionally featured as one of the reasons for establishing a trust. Today, even with a relatively flat tax scale, savings can be achieved with the margin now in place. Any increase in tax rates will result in a steepening of the progressive tax scale and will present an opportunity for the use of a trust in tax planning situations.

An often overlooked issue is the taxation liability associated with a particular investment portfolio. Particularly important is the dividend imputation system. Where the beneficiaries of a trust have high personal tax rates, equity investments which carry high imputation credits will minimise the additional tax payable by the beneficiaries.

Education trusts

Family trusts have long been used to distribute funds for the education of children. Provided they are set up in a cost effective manner, they can be an excellent vehicle for you to plan for your children's and grandchildren's education.

Your child's education is no longer a right but an expense. State schools rely more and more on extra funding from parents. Private schooling has never been a cheap option and parents are having to fund an increasing share of the cost of their children's tertiary education.

In the competition for jobs a secondary education may not be enough. Employers want training, polytech diplomas, even university degrees. Your children's future increasingly depends on how much you can afford to pay over and above what the state is willing to provide. This means that it's never too early to start putting money aside. Anyone (usually relatives) can contribute to the fund, in regular amounts or lump sums. You choose how the fund is invested, the interest is compounded and there are often tax savings as earnings are taxed at the children's rate.

You don't have to be wealthy to have a trust fund for your children. You just need to be serious about their future.

Health and welfare trusts

Currently there are health insurance schemes available into which many New Zealanders contribute. Essentially you gamble that you may need to get out more than you are contributing, but the insurer knows that to stay in business, less must be paid out than is contributed. The investors in these schemes will contribute far more than will be paid out in benefits because there are overheads and other operating expenses to pay. The traditional family trust can be used as a means of setting aside funds for health-related contingencies.

These are not insurance-based but savings-based. If you do not draw the full amount of your contributions in any year, the difference becomes a net accumulation in your trust fund which will grow with compounding investment income. These saving type schemes will appeal particularly to higher net worth clients, who are prepared to take the risk of funding a major operation or illness during the period when their savings type scheme is still building up its capital. The trust becomes tax effective as all amounts paid out will be taxed at the rates applicable to those for whose benefit payment is made, in other words, for children the amounts will be taxed at their personal rates, and there will in all likelihood be tax savings available to the client.

Handicapped people, children, and others with special needs

Trust funds have long been used to protect these people, and they will continue to be used in situations where client protection is the important driving factor.

Rest home subsidies

In recent years some firms have promoted trusts as a means of assisting people to obtain a rest- home subsidy.

The following is a typical scenario:

A married couple in their late 60's have recently experienced some ill health which has caused them to seriously consider that they may both need rest-home care. They own a house worth $270,000 and on enquiring about the fees charged by rest-homes they realise that if they both go into care and sell the house the money received from the sale will soon be used if they require long term care. One of their children has suggested that their home should be transferred to a trust so that they will qualify for a subsidy.

The first point to note is that to qualify for a subsidy you need to have reduced your assets to no more than $15,000 for an individual, $30,000 for a married couple both in care and $45,000 for a couple with one spouse still at home. In the case of a couple where only person is in care and the home is occupied by the other spouse the home is disregarded entirely and there is no requirement to sell the home, contents and any other property necessary to maintain a reasonable standard of living, for example a car.

If you sell your home to a trust, as we noted at the beginning of this paper, it will take a single person nine years and a couple four years to complete the gifting programme on a house worth $270,000. If you have to go into a rest-home before completing your gifting to the trust you would not qualify for a subsidy because the amount owed to you by the trust is an asset of yours.

You also need to have completed your gifting programme five years before applying for a subsidy.

Even if you managed to achieve this, your application may still be declined if Work and Income New Zealand ("***WINZ***") consider that you entered into the trust with the sole purpose of obtaining a rest-home subsidy.

Under the Social Security Act, WINZ is given very broad powers to review the affairs of an individual who applies for a subsidy, particularly if the applicant has conducted his or her affairs with a view to improving his or her chances of obtaining a subsidy.

Furthermore, while there is still a five-year look-back period in place, it is imposed not by statute but by internal policy, which can be reviewed at any time. There have been many instances where WINZ has gone back many more than five years and refused an application for a subsidy. Given WINZ's wide legislative powers under the act, and the possibility of changes to the five-year look-back rule, forming a trust with the sole purpose of obtaining a rest-home subsidy is fraught with uncertainty.

Taxation of trusts

Income tax

A trust is required to pay tax if it derives income from a taxable activity. The rate of tax is either 33 cents in the dollar if the trustees retain the income or, if the income is allocated to a beneficiary, the rate of tax which applies to the income received by the beneficiary from the trust and any other income earned by the beneficiary.

If a beneficiary is under 16 years of age then trust distributions to that infant beneficiary will probably be taxed at the trustee rate of 33 cents in the dollar rather than the infant's lower personal rate. Only distributions from "***untainted***" settlements will be exempt. Unfortunately most discretionary family trusts will be tainted by reason of annual gifting programmes.

Tax consequences on sale of home to trust

It is common to transfer the family home to a trust. What are the tax consequences if the parents are the settlors, are among the trustees and beneficiaries of the trust, and also occupy the home? The outgoings on the home might include a mortgage, insurances, rates and maintenance. It is quite common for the parents, as occupying beneficiaries, to pay these outgoings.

In the absence of any documentation, if the expenses are paid by the parents from private funds, the Inland Revenue Department may treat the payment as rental income or as a gift to the trust. If the expenses are treated as rental income, a tax return will need to be filed. Because the outgoings are deductible expenditure to the trust, the net income would be nil.

If the expenses are treated as a gift to the trust, a gift statement will need to be filed with the IRD within three months of the date of the gift. This is assuming that the total of the payments for the expenses and other gifts made to the trust exceeds $12,000 in any 12 month period. In most cases there will already be a gifting programme in place to gift the home to the trust, so it should be noted that a donor can gift up to $27,000 in any 12 month period before incurring gift duty.

Another option is to record the expenses paid by the parents as a debt owing by the trust to the beneficiaries in a deed of acknowledgement of debt. The advantage of this is that a tax return does not need to be filed. If it is intended that the debt owing by the trust will be forgiven, there will be no adverse tax consequences for the trust, provided the creditor (or creditors – in this case the parents) forgiving the debt to the trust is a natural person and the trust was established primarily to benefit either a natural person for whom the creditor has natural love and affection, or a charitable trust, or both. This concession applies for tax purposes. Gift duty still remains an issue.

There are tax consequences when a trustee makes a distribution to a beneficiary who does not come into one of the categories described above. The trustee is deemed to have gross income to the extent that the distribution is less than or equal to the amount of the debts forgiven by the creditors. The gross income must be returned to the year the distribution is made.

Trustees who forgive debts in consideration of natural love and affection are required to keep records of amounts of debt forgiven by creditors and amounts distributed to the trust's beneficiaries. These records must be retained for as long as the trust exists (up to 80 years).

Conclusion

The use of private trusts is growing as the public becomes increasingly aware of the tangible benefits and security which tailor-made trusts can provide. If you own assets in excess of $1 million or by the time you retire you expect to own assets in excess of $1 million in today's dollars a family trust offers you many benefits.

From our observations, while there has been a dramatic increase in the number of trusts formed in recent years, by far the majority have been established with one objective in mind – to defeat the Government's means testing process. In our opinion this approach is too narrow and short term to ensure longevity.

What is certain is that family trusts will increasingly come under the spotlight, both from the Inland Revenue Department, which oversees trusts, and from beneficiaries who believe that they have been disadvantaged. Increased litigation will emerge and the structure and resilience of trusts will be more thoroughly tested.

If you accumulate assets within the protective frame work of a family trust it is a pointless exercise to incur the costs and devote the time required over many years only to find, when you come to rely on the trust structure, that an opposing party seeks to have the trust unwound or set aside.

To avoid this situation, we have formed a company, called "Gellert Ivanson Trustee Limited", to provide the services required to administer a family trust. When you engage Gellert Ivanson Trustee Limited to administer your trust you can be sure your legal and administrative responsibilities are being met by a team of experienced, specialised professionals. As a result, settlors, trustees and beneficiaries can know the trust is being operated in an efficient and productive manner.

In deciding whether or not to form a trust be warned – you cannot have your cake and eat it as well. If you transfer assets to a trust those assets become the assets of the trust and all the trustees are responsible for administering those assets. You cannot continue to deal with those assets as if the assets still belong to you. They are not. All the trustees must be consulted in relation to all matters of any significance including how the trust capital is invested and how the income and capital of the trust is distributed among the beneficiaries.

As we have already noted the trustees must exercise the care and skill that a prudent person would exercise in managing the affairs of others. This may result in the trustees agreeing with your wishes but not necessarily so. Trustees who act purely as your nominees and in accordance with your instructions may cause the trust to be set aside as a sham.

While these requirements may seem onerous they lead to sound business practices. If you appoint an independent person whom you believe able to contribute to your decision making process, consultation should come naturally and with benefit. Generally, it should not be time consuming or onerous.

To conclude. Martin Hawes, who is a well known commentator on trusts, says in his book "***77 Frequently Asked Questions***" – "Trusts are interesting because of the ways they can solve difficulties in people's lives and in their family circumstances. Often these concerns are less about money than about relationships within a family or worries about the future. The reason trusts are so popular in New Zealand is only partly about saving tax or avoiding the asset testing regime for rest-home subsidies. Most people who form a trust are looking for certainty: certainty that the Government won't take the assets they were planning to leave as an inheritance for the kids, certainty that their will won't be overturned, certainty that their assets won't go to their son-in-law if their daughter's marriage fails, certainty that their assets will stay in the family down the generations, certainty that they will have money for their children's or grandchildren's education."

It is the ability of trusts to resolve these family and financial problems that makes them so popular. It is the wide variety of uses to which they can be put, taking account of the different circumstances and situations in which families live.

The information contained in this paper is generalised and is no substitute for specific advice on your particular needs.

How a trust works in practice

Theory is fine, but to see how a family trust works in practice lets take the example of a couple who we will call Grant and Rosemary Taylor.

Grant and Rosemary have successful careers and have accumulated substantial assets. Both are in their mid 40's. They have two children, David and Mary who are aged 17 and 15 respectively.

Grant and Rosemary decide to set up a family trust called the Taylor Family Trust. They are both trustees. In addition they appoint an independent trustee, Gellert Ivanson Trustee Limited, to ensure that all legal and administrative responsibilities are satisfied.

The trust deed confers on the trustees the discretion to pay income/capital to Grant and Rosemary, their children David and Mary, their grandchildren and great-grandchildren.

Grant and Rosemary transfer to the trust a house valued at $400,000 and investments valued at $300,000. To avoid paying gift duty they immediately start a gifting programme which will take 12 years to complete.

When David and Mary leave secondary school they both decide to go to university. To assist with their fees and other expenses the trustees resolve to pay to David and Mary the income earned on the investments owned by the trust. When David and Mary complete their university studies the trustees decide to accumulate the income to provide for the retirement of Grant and Rosemary.

Unfortunately, when Grant is in his mid 50's, the company he works for is taken over and Grant is made redundant. Over the years Grant has developed a keen interest in coffee and he decides to purchase a café in Ponsonby Road with the redundancy payment he receives from his former employer. Grant forms a company to own the café. Even if the café is unsuccessful the assets in the trust will not be affected.

On his death, Grant's will leaves his personal chattels to Rosemary and his remaining assets to the Taylor Family Trust.

With increasing age Rosemary finds it difficult to look after herself and she decides to live in a rest home. She has no assets of her own and she applies to Work and Income for a rest home subsidy.

Further time passes and on Rosemary's death a meeting is called to discuss the future of the Taylor Family Trust. David and Mary by this time have families of their own. Because of the many discussions they have had over the years with Grant and Rosemary about the benefits of the trust David and Mary decide they want the trust to continue. They arrange for the assets of the trust to be divided into two and for the assets to be resettled on separate trusts – one for David called The David Taylor Family Trust and one for Mary called The Mary Jamieson Family Trust. In David's trust the beneficiaries are David, his children and his grandchildren.

Mary's trust is similar. The process originally started by Grant and Rosemary starts all over again.

For More Information

Visit our website at www.gellertivanson.co.nz or call us on (09) 575 2330.