

THE CASE FOR CORPORATE TRUSTEES FOR PROPERTY INVESTORS TRUSTS

The majority of single trusts in New Zealand have traditionally been formed with three individual persons acting as trustees. Typically these will be husband, wife (could be two partners) and an independent professional person. The independent person's role is to remove what would otherwise be total control of the trust from the husband and wife, as well as provide an informed and experienced opinion which needs to be taken into account in the decision making and management of the trust.

The difficulty individual persons create are as follows:

All land titles, mortgages and share ownership are not stated in the name of the trust, but rather in the individual trustees' names. The trust has a maximum life of 80 years from inception. Most individuals, by the age they are appointed, will not see out the life of the trust. In fact through accident, premature death, separation divorce, or falling out with, or moving on from the independent professional person trustee, these trustees will often inevitably change. Should this occur then all land titles and mortgages will need to be re-conveyed to the new person trustees. Similarly all shares will have to be transferred, and the trust deed itself will have to be changed by deed to reflect this change of trustees. This whole process will be expensive, (several hundred dollars per property) and is multiplied by the number of properties owned in the trust. For example ten properties could result in a fee of say at least \$5,000.

In addition each person has unlimited liability.

A better alternative is a corporate trustee, which is a limited liability company, formed and dedicated to function as the sole trustee company. This one company does the tasks that the three people trustees would have otherwise done. The life of a company is perpetual (if re licensed every year), so can live the full lifetime of the trust. The property titles, mortgages or shares registered and owned by this company, will never have to be transferred. Should the individual persons acting as directors and shareholders change, then these changes can be achieved with an inexpensive email to the Companies Office Registry. The company has limited liability, and the individuals inside the company are one step away from the 'coalface' risks.

Property traders have little choice, and should always have a corporate trustee in their trading trusts, as it is dangerous and un-businessman like to trade without the company format.

These days, even family (or wealth) trusts can have several land titles (home and more that one holiday home) and listed share ownership. A case can be made for these trusts to also have a corporate trustee from inception.

What are the downsides of going this direction. The initial additional fee of approximately \$400.00 is small upfront insurance to avoid future major potential costs, and provide limited liability protection for the trustees and the other advantages. The Companies legislation has to be complied with, which will require a little more annual compliance and resulting cost, both of which are minimal.

Therefore I advise clients when forming trusts, to opt for the corporate trustee path. When faced with a change of trustee person/s I also advocate this route. This method has been tried and tested for many years in Australia and is found to provide the superior structure.

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