CollinsGroup
Private Wealth Management

Inheritance Trusts provide protection for your bequest

Bequeathing assets to your children or grandchildren is common for a many people. But without proper planning of this wealth transfer you could be handing your hard earned assets straight to your son or daughter's ne'er do well existing or future partner.

That's why increasing numbers of people are opting to set up inheritance trusts. These are shell trusts to which you bequeath your assets on death through your will.

The idea is that instead of bequeathing the money to the children or other beneficiaries directly, you pass it into a trust which, with a correctly drafted deed, should protect the assets from third parties.

There are plenty of scenarios aside from the dodgy partner where assets bequeathed directly to a beneficiary could be lost. For example, what if, after you die your beneficiary is placed under investigation by the IRD which would love to get its hands on your bequest.

Bequeathing to a trust can also take the pressure off your offspring whose spouses or partners may want the inheritance spent on paying the mortgage off, starting a business or buying a boat for example.

Assets inherited are automatically separate property. But it only requires a small amount of intermingling of the inheritance to be used for joint purposes before it becomes subject to the Property (Relationship) Act.

It may be difficult if you receive an inheritance though. Your partner knows that your parent has passed away and might think "we can use this as collateral for a business or property deal".

You can protect the inheritance from your partner, but you are going to have to make a conscious choice to do so.

A regular family trust might not be the right thing for people who are getting older.

Inheritance trusts may well suit people who have accumulated reasonably substantial amounts of assets and are at an age where gifting $27,000 a year or $54,000 for a couple, won't make much of a dent. But they still want to protect their assets for their children and grandchildren.

And for some people it can be a disadvantage to transfer the home to a family trust during their lifetimes.

The family home is exempt from residential care financial thresholds but a home transferred to a family trust where gifting hasn't been completed, isn't.

If the children already have their own trusts in place in their own name, it's possible to bequeath assets to those trusts.

Parents can't 100% control how the trust is managed after their death. But they can write a memorandum of wishes on the subject giving direction to the trustees about how they would like the money managed after they are no longer alive.

Memorandum of Wishes become important when there is a potential beneficiary with drug, gambling or other issues. In those circumstances you could direct the trustee to take certain actions such as consulting with a third party or siblings before they respond to requests for larger sums of money.

Memorandum of Wishes are not legally binding. But if you have independent trustees it's unlikely they wouldn't take account of settlor's wishes.

Trusts can come with traps for the unwary. With inheritance trusts for example, if you make the beneficiaries trustees you are at risk of the exercise becoming pointless. That's because a partner could pressure the beneficiary to use powers as a trustee to access the capital.

Your wishes as a settlor can be defeated if you choose to cut out members of the family financially. There is legislation that enables people to make claims against a deceased person's estate that include the Property (Relationships) Act and the Family Protection Act. The latter permits spouses, partners, children, grandchildren and, in limited cases, parents or step-children to make claims on a breach of moral duty to provide for them under the will.

It's a misconception that if you have a trust there is no need for a will. That's not the case as you can't bequeath without a will. What's more, a properly drafted will extinguishes gifting, so they can pass straight into the trust and the beneficiaries do not need to gift that money over a period of time.

Once set up, Inheritance Trusts cost little to administer during your lifetime – unlike family trusts. It is only when the assets are transferred to the inheritance trust that the costs are incurred. A typical inheritance trust costs **$500 plus GST** to establish.

To enquire about Inheritance Trusts contact Collins Group at

info@collinsgroup.co.nz

or

0800 46 26 55

CollinsGroup
Private Wealth Management