

Good Trust Administration and Trustee Duties

Trust Administration

Trusts are increasingly coming under attack from, among others, unhappy beneficiaries, disgruntled spouses, creditors and the IRD. The best way to protect the trust and its assets is to ensure the trust is properly structured and scrupulously administered. Good trust administration and record keeping will minimise the potential grounds for attack. The good governance of a trust requires the following:

- Genuine trustee independence. Each trustee must think for themselves and make independent trustee decisions. Where you have an independent trustee this trustee must be involved in the decision making process; there must be no “rubber stamping” of decisions.
- Trust accounts prepared each year. The trust accounts must be available if beneficiaries request them. If the trust only holds passive assets, for example the family home, the accounting requirements can be met by the use of a simple balance sheet recording the trust’s assets and liabilities.
- No intermingling of trust assets with personal assets. Where the trust holds/receives money this must be held in a separate bank account. The bank account must not be used as a personal bank account. Each withdrawal from the bank account must be supported by an appropriate trustee resolution. Where there are frequent payments for trust expenses for example payment of rates etc these payments can be pre-approved at the annual trustee meeting.
- All trustee decisions recorded by way of a written trustee resolution. The trust minute book should provide an account of the administration of the trust including all assets acquired and sold, all liabilities entered into, all distributions made to beneficiaries. The minute book must be maintained for the lifetime of the trust.
- If possible, annual trustee meetings. If this is not possible each year the trustees should record in a resolution that there has been a review of the trust’s investment strategies and assets, approval of the trust financial statements, approving either that the trust income is distributed to the beneficiaries or accumulated, and any other matters that are relevant to the trust management. This resolution should include only things that are actually considered by the trustees and should avoid using standard phrases such as “the needs of all the beneficiaries being considered” as this can come back and cause difficulties for the trustees if it can later be established that the trustees did not actually turn their minds to these issues.

Trustee Duties

The trustees are the legal owners of the trust assets and are responsible for the administration of the trust. Trustees have a number of legal duties which duties include:

- (a) to know the terms of the trust as set out in the trust deed;
- (b) to adhere to the terms of the trust;
- (c) to act fairly by all of the beneficiaries;
- (d) to act in the best interests of the beneficiaries;
- (e) not to make money from the trusteeship;
- (f) to be active, that is the trustees must perform their duties not just rely on co-trustees;
- (g) to act unanimously;
- (h) to pay the correct beneficiaries; and
- (i) to keep proper accounts and give information to beneficiaries if requested.

If a loss to the trust results from a trustee's failure to adhere to these duties the trustee may be personally liable to make good the loss to the trust. For example, if the trustees, contrary to the terms of the trust deed, use a trust property as security for borrowing to a party unrelated to the trust, and subsequently the security is called upon and the trust property is lost, the trustees could personally be liable to repay the value of the property back to the trust.

Brookfields Lawyers supports our client trustees in the administration of their trusts and assists them to fulfil their trustee duties by providing a comprehensive trust administration service. This includes monitoring the trustee's decisions and resolutions/minutes, the annual gifting programme and keeping the trust's records in order, preparing annual financial statements, and most importantly providing timely and quality advice to trustees. If you want further information on this please call either Howard or Alison.

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