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Succession Planning

When should you start talking to the children about the family wealth and trusts?

Many inheritance and estate plans fail due to family members not being properly educated about the role of being a beneficiary, an executor, or a trustee. Children and grandchildren are often not properly prepared for the responsibilities that come with accepting or administering an inheritance. Encouraging discussions with family members about the affairs of the estate sooner rather than later can protect both your estate and preserve family relations.

Where there is a family business or investments, familiarise the family with these. Explain investment strategies and reasons for decisions, and encourage the relevant family members to take an interest in understanding and building family wealth. Being open and frank about money matters from the outset can alleviate expectations and misunderstandings in the future.

It is essential to review your estate planning structures from time to time, and, if appropriate, to include the relevant family members in the

process. Most likely, you and / or your partner will have a clear idea of the way your estate should be structured, and how it should be distributed upon your deaths. It is simple to put in place mechanisms to this end, but is less simple to ensure that everyone plays their part when the time comes.

Ensure that your will is changed as required to reflect life events and changes in family structures. Ensure that executors know what is expected of them, and provide details of organisations or support people that can assist them in administering your estate. It can also be useful to discuss the contents of your will with your beneficiaries. You may wish to explain why decisions have been made in the manner that they have can. While this may seem uncomfortable this can have benefits further down the road and help avoid nasty surprises and hurt feelings that might arise after your death.

It is also important to take the same approach with the family trust. Check your trust deed and your will to make sure that powers of appointment and removal of trustees and beneficiaries are properly utilised, and that there is effective mechanisms for dealing with disagreements or disputes should



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they arise. If your trustees will be family members, take extra precaution to discuss with them the rights and responsibilities of being a trustee as their actions will be instrumental in your wishes being carried out fully.

Where you have an enduring power of attorney in place it is useful to ensure that your attorney is aware of the responsibilities conferred by a power of attorney (as well as any obligations such as consulting with other family members) and is comfortable with the responsibilities associated with the appointment should you lose mental capacity.



New property purchase information – how should trustees prepare?

In another new development relating to land, with application to all agreements of sale and purchase entered into after 1 October 2015, each owner of a property must complete a Land Transfer Tax Statement. When land is owned by a trust each of the trustees must complete a separate Land Transfer Tax Statement. The Land Transfer Tax Statement requires information including:

- The transferor or transferee's Inland Revenue number, and
- Whether or not the transferor or transferee is tax resident in New Zealand

Importantly, the Inland Revenue number that is required for trusts is the trust's Inland Revenue number, not the trustees. This means that trusts that previously did not need an Inland Revenue number (such as trusts that only own the family home) will need to obtain an Inland Revenue number before selling trust owned properties.

There is also a main home exemption from the new tax information requirements. However, this exemption does not apply when the main home is owned by trustees.

New Bright-line Test

Before 1 October 2015, sales of residential land were not generally taxed. However, a new "bright-line" test, has been introduced that will (tax sales of residential land that are sold within 2 years unless an exception applies).

There is a main home exception. However, importantly for trusts the main home exemption can only be used by a trust when the property that has been sold was the main home of a beneficiary of the trust and the Principal Settlor of the trust does not own another main home or is not a beneficiary of another trust that owns the Principal Settlor's main home.

Principal Settlor is a new term that is being introduced for the purposes of the bright-line test and means the settlor who has made the greatest or greatest equal settlements onto a [trust](#) by market value.

In future trustees will need to know when residential land is bought and sold so that any liability under the bright-line test can be considered. For most sales the start-date for the 2 year period is the date that the transfer of the land is registered on the title and the end-date is the date of an agreement for the sale of the land (not the date the transfer

of the title is registered).

Trustees will also need to be aware of all of the settlements onto a trust for tax purposes so that the Principal Settlor can be identified.



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