

# WEATHERING THE FUTURE

Your Guide To Establishing Legally Compliant Trust Structures In New Zealand



NEW ZEALAND  
TRUSTEE  
SERVICES



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“A valuable source of information on asset protection from the founder of New Zealand Trustee Services.”

**FAMILY TRUSTS IN NEW ZEALAND** by JONATHAN CRON

The definitive guide, written by one of New Zealand's leading experts on Family Trusts, brings together everything you need to know about setting up and running a Trust.

Clear and straightforward, it includes up-to-date advice and real-life examples that will help you understand how to make a Trust work for you and your family.

# ABOUT US

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**New Zealand Trustee Services is proudly privately owned. We value our independence and what it means for you; our valued client. We are not aligned to any financial institution and don't accept commissions or brokerages for the placement of funds.**

We are impartial, which leaves us free to work purely for the benefit of our clients.

Our mission is simple – we aim to educate clients about how to protect and preserve their assets. It is a mission built on a desire to cement our business relationships with integrity and knowledge.

Asset protection is a very personal business and New Zealand Trustee Services develops business on a foundation of lasting relationships with individuals, families and business clients – often these relationships can span generations.

We want our relationships with our clients to work both ways, we focus on helping our clients and families have a real part in determining their Trust's direction and structure.

It is easy to be overwhelmed by the decision to form and run a Trust – at New Zealand Trustee Services we walk you through the decisions and stick with you to see your wishes fulfilled.

All information our clients need throughout the Trust's life is provided in a timely, cost effective manner, in clear language, backed with advice from our expert Trust Managers.

## Jonathan Cron – Director/General Manager

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**In establishing Canterbury Trustee Services on 21st July 1999, Jonathan had a desire to bridge the gap that seemed to exist between the Trustee Companies and other professional entities.** This Company enjoyed tremendous growth not only in Canterbury but throughout New Zealand, therefore on 26th March 2004 New Zealand Trustee Services Limited was created.

Jonathan has had over 20 years experience in the Trustee industry. 10 years of this experience was gained with Guardian Trust. While at Guardian Trust, he was employed as a Trust Manager and Business Development Manager.

Jonathan is the President of the NZ Trustee Association and he currently sits on their council.

Jonathan's qualifications include:

- *Member of the Executor and Trustee Institute M.E.T.I;*
- *Associate of the Executor and Trustee Institute A.E.T.I;*
- *Graduate Certificate in Management;*
- *Graduate Diploma in Management;*
- *Master of Business Administration M.B.A.*

In 2010 Jonathan published his first book 'Family Trusts in New Zealand. This has been well received and is recommended reading for all with Trusts in New Zealand. Jonathan is now based in Auckland and welcomes the opportunity to meet with you to discuss your Trust Structure.

**Contact Jonathan** - 0274 320 875 or [jcron@nztrustees.co.nz](mailto:jcron@nztrustees.co.nz)

## Kevin Scott – Christchurch Branch Manager

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**Kevin is the Christchurch Branch Manager for New Zealand Trustee Services and is responsible for the Trust reviews carried out by the Company.**

Kevin has over 35 years experience in the Trustee industry and prior to joining New Zealand Trustees 15 years ago, he was with Perpetual Trust.

Kevin is a Senior Member of the NZ Trustee Association and also currently sits on their council. He is a member of the Executor & Trustee Institute M.E.T.I., and for 10 years he tutored the Estate Law & Practice section of the Legal Executives Qualification at Christchurch Polytechnic, on behalf of the New Zealand Law Society.

Kevin is responsible for the overall running of our Christchurch Office and attending to the ongoing management of our complex Trust Clients, he is also responsible for our 'Trust Review' service which is covered later in this brochure.

Kevin welcomes the opportunity to sit down with you and review your Trust Structure to ensure it meets your requirements both now and for the future.

**Contact Kevin** - 027 278 2130 or [kscott@nztrustees.co.nz](mailto:kscott@nztrustees.co.nz)

## Penny Cron – National Operations Manager

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**Penny is responsible for the daily management of the Company.**

Penny will continue to ensure that Annual Meetings with our clients include our holistic "One Team" approach.

Penny will be liaising with other Advisors for our clients; inviting them to attend our Annual Reviews. She will also ensure that our records for all clients remain accurate and are reflective of the real Trust position annually.

Penny is also based in Auckland and welcomes the opportunity to meet with you at any time.

**Contact Penny** - 027 295 5760 or [pcron@nztrustees.co.nz](mailto:pcron@nztrustees.co.nz)



# INTRODUCTION TO TRUSTS

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**Although Family Trusts have become popular recently they have been with us in one form or another for more than 400 years. Their basic nature remains much the same, but their role has evolved to meet the needs of each generation.**

## **Should you use a Trust to protect your assets?**

Assets can be put at risk in a number of different ways. These can include business failure, legal action or a relationship breakdown. We also do not know what the future holds. Government policy can change on a whim; bringing risks to the value of those assets we have strived so hard to acquire.

Will we get a Capital Gains Tax or will the Asset Testing Regime be extended to other Government Benefits? We live in volatile times and there are no guarantees the Government policies we have now will be here next year.

## **What is a Trust?**

When someone who owns assets and perceives that these could be put at risk or could have some potential for loss, that person would look to divest or remove themselves from those assets, but still enjoy the use and control of them. To continue to do so they will transfer the assets to Trustees of their Trust. The Trustees then hold these assets on behalf of the family group, rather than the individual.

It is common in New Zealand for those who establish the Trust to be kept in total control of this new entity, as most fear that they will otherwise lose control of their assets. Most would agree that in order to achieve this control you must also be a Trustee. We would agree with this advice, however we maintain that you cannot possibly control something that you simply do not understand. This, in our view, is where Trusts have the potential to be challenged, as the individuals that are in 'control' of the Trust simply do not understand the new position that they hold. At New Zealand Trustee Services, we look to educate – as it is only with knowledge that you can successfully administer and control your Trust.

## What can a Trust do?

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**A correctly structured Trust can secure your assets for future generations - in exactly the manner you wish to preserve those assets.**

For instance, inherited funds are separate property until they are used within a relationship. At that point they become relationship property and your child could potentially lose half of them through a separation. At the time of your death, your child may be going through some business or creditor issues. If that were the case, your assets could go to satisfy creditors rather than to support your child or grandchildren.

### **Protect Separate Property**

Trusts are often used when individuals have separate property they do not wish to intermingle with their relationship property. If the separate property is placed in a Trust, they no longer own it and it can then be kept separate from relationship property. This is particularly important for those people who have just left a relationship or have property they wish to protect prior to forming a new relationship.

### **Reduce Risk of Asset Loss Through Business Failure**

New Zealand is a country of small businesses and unfortunately some of them do not trade successfully. Placing your assets in a Trust may help protect your family in the event of a business failure.

### **Reduce Risk of Loss of Assets Through Legal Action**

As a country we seem to be becoming more litigious in nature. If your business is one that could expose you to legal action through advice or actions, you may wish to protect your family by placing your assets into a Trust.

### **Gain Taxation Benefits**

When income is received in a Trust the Trustees can elect to either retain income within the Trust or allocate it to a beneficiary. This decision should be made in conjunction with the Trust's Accountant.

#### **Note:**

*The timing in respect of the establishment of the Trust is critical as protection takes time, there are very few immediate gains for any Trust, therefore the formation of a trust should occur when you do not need this protection immediately. Advice on forming a Trust for this or any other purpose should be sought via New Zealand Trustee Services' Trust Managers.*



## Reasons to Form a Trust

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### The Changing Role of Trusts

Historically, Trusts were often formed to help high-earning individuals mitigate the 39% income tax bracket, and also to stop someone's assets from being sold by others to fund retirement costs such as rest home care. Accordingly, in the past, Trusts were marketed as a method of achieving these two quite specific objectives.

Due to legislative changes, many of the 40,000 existing Trusts in New Zealand will not achieve the goal they were originally established for. This is partially because a large number of Trusts were established by professionals who simply took no further part in the administration process. As a result, if reviewed, many existing Trusts could face compliance issues regarding the manner in which the Trust has been administered.

Moving forward in an attempt to resolve concerns around Trust compliance, the Law Commission has issued a 'Preferred Approach' which now sits with the government. Many "Professional Trustees" are now seeking to remove themselves from this role due to the perceived liability Trustees may face in the future.

For anyone concerned about the compliance or effectiveness of their Trust, peace of mind can be achieved with a professional and diligent examination of that Trust. A fully compliant and successful Trust will ensure that all Trustees receive the assets with clean hands – and that no-one at the time of the Trust formation has been prejudiced by the establishment of, and the transfer of assets into, that Trust.

### How to ensure your Trust is effective for the future

Firstly we sit down with those who have Trusts and determine why the Trusts were created. Then we see if the requirements and end result are going to be realised under present regulations and court rulings. We also need to establish if the personal needs of the client have changed since the establishment of their Trust - and if their thinking around asset protection has also changed.

An example here would be around the Property Relationship Act. Many couples want to ensure that should one partner pass, then no future partner of the survivor can look to strip assets away from the family.

Many people we speak to are now refocusing their Trust Structure to take into account the Succession Planning perspective - safeguarding against individual inheritors selling off assets to the detriment of the long term intentions of the Trust entity. Under the various recommendations by the Law Commission, one is that the Perpetuity Period be extended from the represent 80 years to 150 years. So now we have the ability to provide intergenerational transference of wealth, whereby the parents' Trust will be distributed to the children via an individual Inheritance Trust, thus ensuring that the protection remains in place for the entire family.

When Trusts receive a gift from another Trust, there is no gifting requirement and everything is therefore still protected as the assets have never actually touched the hands of the children. Hence many of our clients now create Inheritance Trusts for their children when creating their own Trust. In this situation it's vital to ensure the Perpetuity Periods for the Family Trust and Inheritance Trust are identical as we do not want to be in a position where we transgress the rule of perpetuity.

Single people or those leaving a relationship with assets should also consider the establishment of a Trust. However this must be created prior to any relationship being formed, otherwise it may be argued that the Trust was established to prejudice this new partner.

Asset Protection to ensure that potential future Creditors cannot make a claim over the family assets is also very popular. Like all Trusts, this type of Trust must be created well and truly in advance of any potential issue.

Remember - the best time to create a Trust is when you do not need it!

## Trust Management

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### **Your Trust requires diligent management to remain legally compliant.**

In the past, many Trusts were established without due attention to administrative requirements. Given recent Preferred Approach issued by the Law Commission we see that this will most certainly change how trusts are both perceived and administered. Adherence to correct administration is a must, if the Trust is to remain compliant and effective. As such, New Zealand Trustee Services works closely with clients to make sure they feel informed about, and in control of, the administration of their Trust. Our Trust management process includes the following stages;

- i. Every Trust is reviewed annually
- ii. Review form completed by Trust Managers and clients
- iii. Holistic review of assets in Trust, assets not in Trust, whether these assets outside should be introduced
- iv. Wills and Memorandum of Wishes reviewed
- v. Trust Minutes and any supporting Deeds executed to record meeting
- vi. This is part of our process to maintain compliance for Trusts.
- vii. This means meeting each year, reviewing the assets held and ensuring that all documents are recorded correctly - again specific to the requirements of the Trust;
- viii. Ensure we hold sets of Financial Accounts etc. on file;

# TYPES OF TRUSTS

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## **What are the various types of Trusts that are used today and why?**

There are specific reasons why, when a Trust is established, serious thought is given to the clients 'end game'. Too many Trusts have been created in the past without any thought given to what the clients want and how, practically speaking, the Trust will actually work under various scenarios that may play out in the future.

The six main types of Trust are:

### **Family Trust**

There is of course the Family Trust which is generally used by a couple either married or in a de facto that have combined assets of equal values and generally do not have children from any other relationship. The Family Trust will generally hold a Family Home, Investments a holiday home etc..

### **Parallel Trusts**

These replaced the old style 'Mirror Trust' and the reasons why will be explored later. Essentially the Parallel Trust should be considered by those who have disproportionate values in the assets they hold, have children from a previous relationship and have formed new relationships – this is what we refer to as a Blended Family. Here couples who are looking to protect their assets and want to ensure that their children will receive an inheritance would establish a separate Trust for each partner.

### **Single Trust**

This Trust would be used by a single person who is just starting to acquire assets such as their first home and want to use the Trust to keep their assets separate from future relationships. They should also be considered by people just exiting a relationship and who want to ensure that their assets are keep separate from a future relationship.

### **Inheritance Trust**

Most parents, at some stage of their lives need to consider what provisions they would like to make for their children on their passing. They would normally wish their children to have the use and enjoyment of the assets but also recognise that most children only inherit funds once. Therefore some thought should be given to establish some protection around the assets that their children inherit to ensure they are not subject to a claim from a partner, creditor etc. of that child.

### **Business Trust**

Here we look to separate out Business Assets from the Family Assets. The Business Trust should hold shares in a Private Company therefore allowing dividends to pass to this Trust, which in turn can be distributed to that Trust's Beneficiaries (this should include your Family Trust/Parallel Trust or Single Trust). It will also allow the growth of the Company to be retained within the Trust and not to the former shareholder which presumably was you.

### **Charitable Trusts**

This type of Trust is used by individuals who wish to provide for a charitable purpose and can be held for perpetuity.



## Structure of a Basic Trust

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Below is a diagram of the standard format for any Trust.

To form a Trust, a Trust Deed is prepared and signed. The Trust Deed specifies who the Settlor, Trustees and Discretionary Beneficiaries are. The Trust Deed also provides the Trustees with a full range of administrative powers. This allows the Trustees to undertake virtually any action an individual could do. Next, we'll explain the role of the Settlor, the Trustees and who should - and should not - be included as a Beneficiary of your Trust.

### Settlor

The Settlor only has three roles, the first being to establish the parameters of the Trust, the second to appoint the Trustees and the third to select the assets that they wish to be held by this Trust. The term 'Settlor' should not be referred to in the body of the Trust Deed, particularly where the 'Settlor' has the ability to 'hire and fire' Trustees and also 'add or remove Discretionary Beneficiaries. These powers should be held by the 'Appointor/Protector' or the 'Trustees'.

### Appointor/Protector

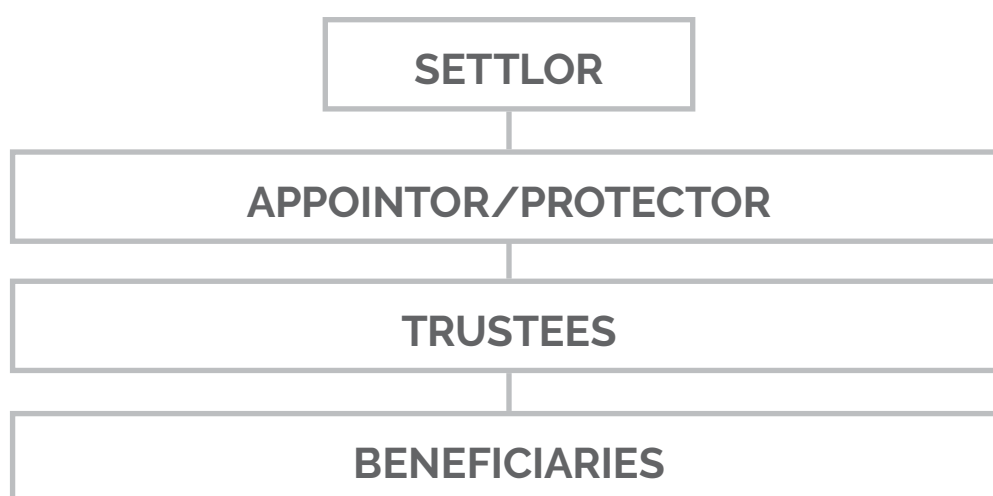
The Appointor/Protector is the individual(s) who has the ability to 'hire and fire' the Trustees. They should also provide their prior written consent to the Trustees where there is an occasion to 'add or remove' Discretionary Beneficiaries.

### Trustees

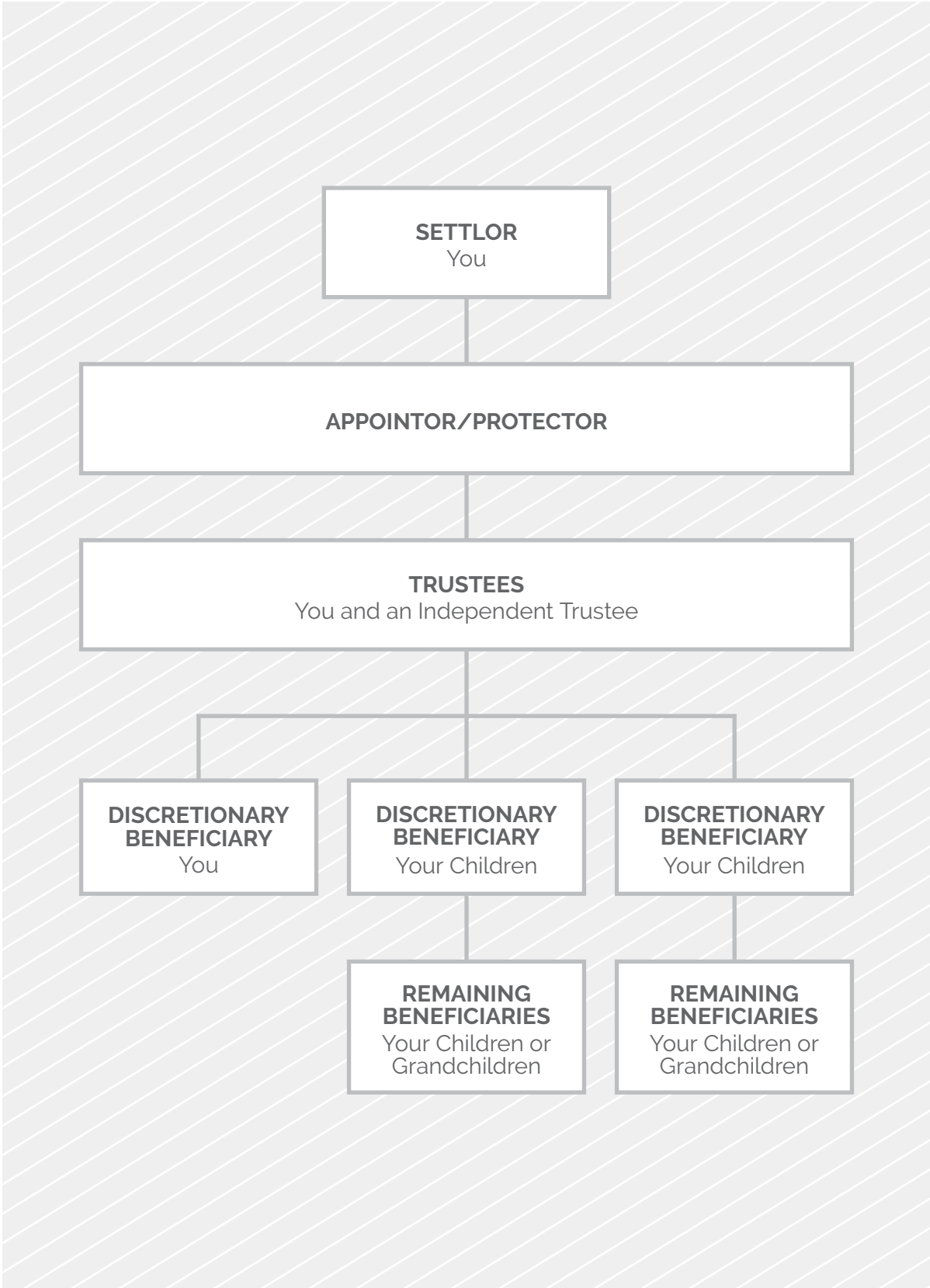
The role of the Trustees is to control the Trust and ensure it remains compliant, to make the decisions and to record these decisions, to meet annually and effectively hold the assets that are now owned by the Trust on behalf of the Beneficiaries of this Trust, and to invest these assets in a prudent manner.

### Beneficiaries

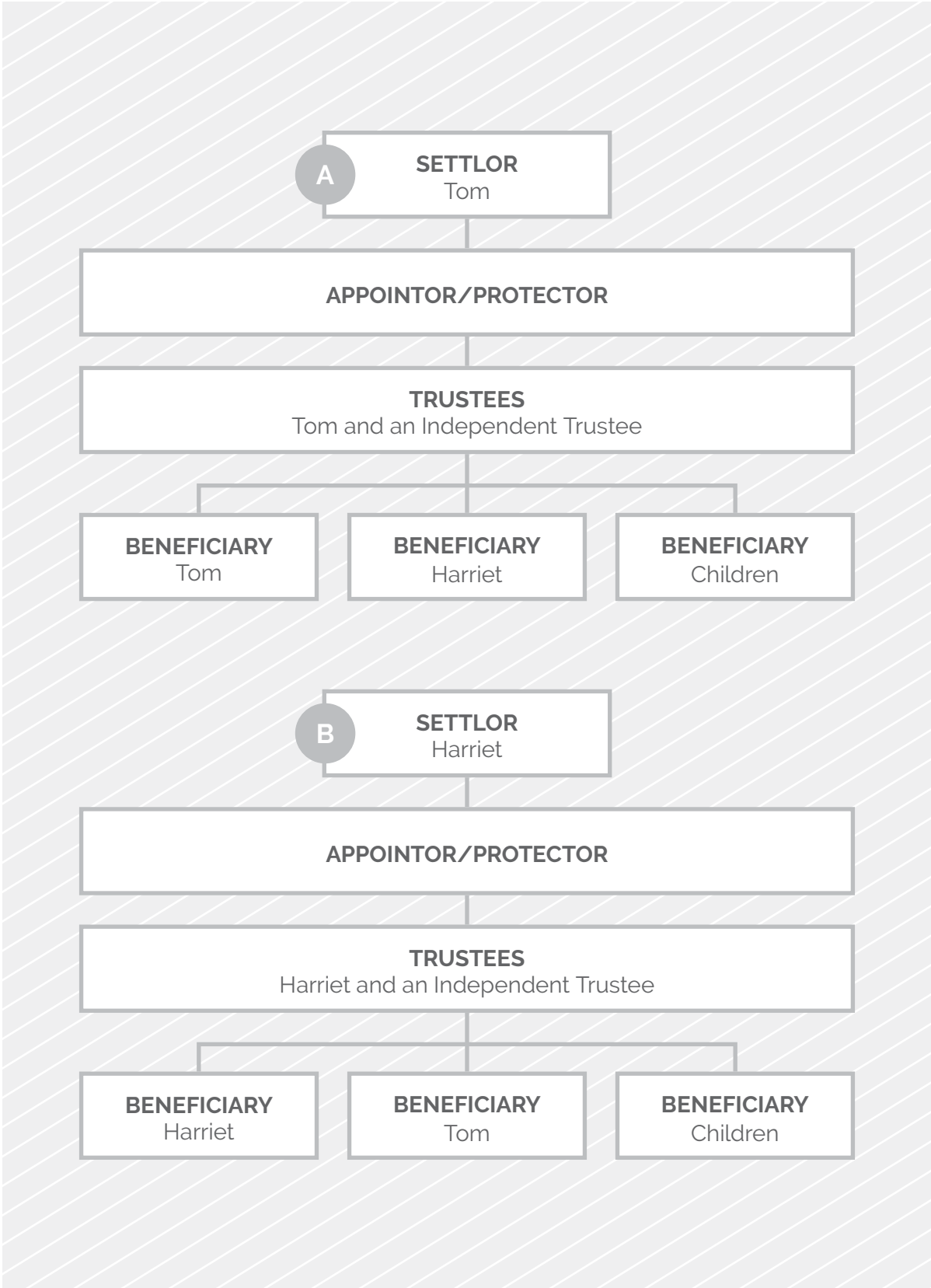
The Beneficiaries or Discretionary Beneficiaries are those people you intend to benefit from the Trust. These people should be specifically named. Future or former partners should not be mentioned at all.



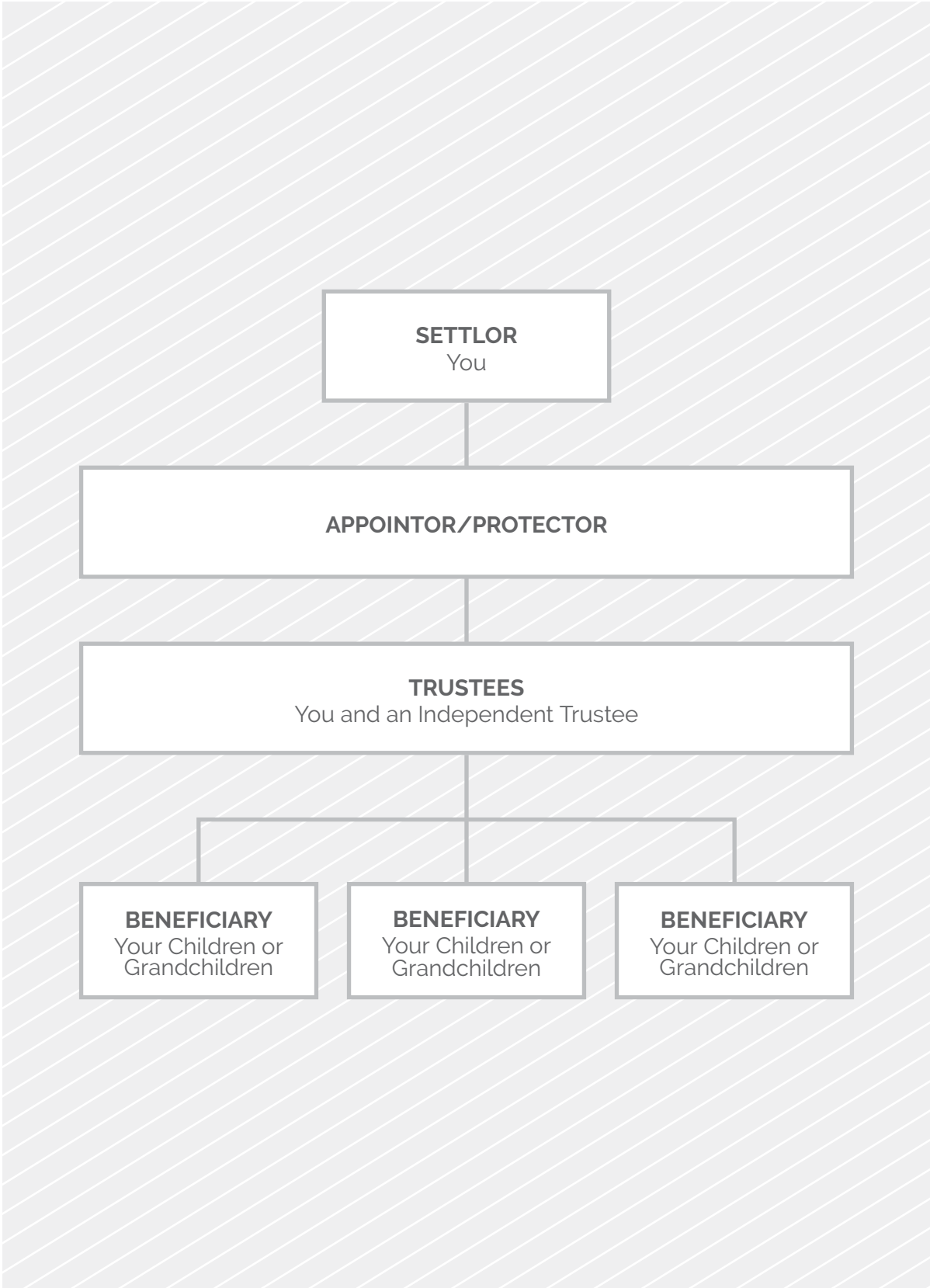
# Structure of a Family Trust



# Structure of a Parallel Trust

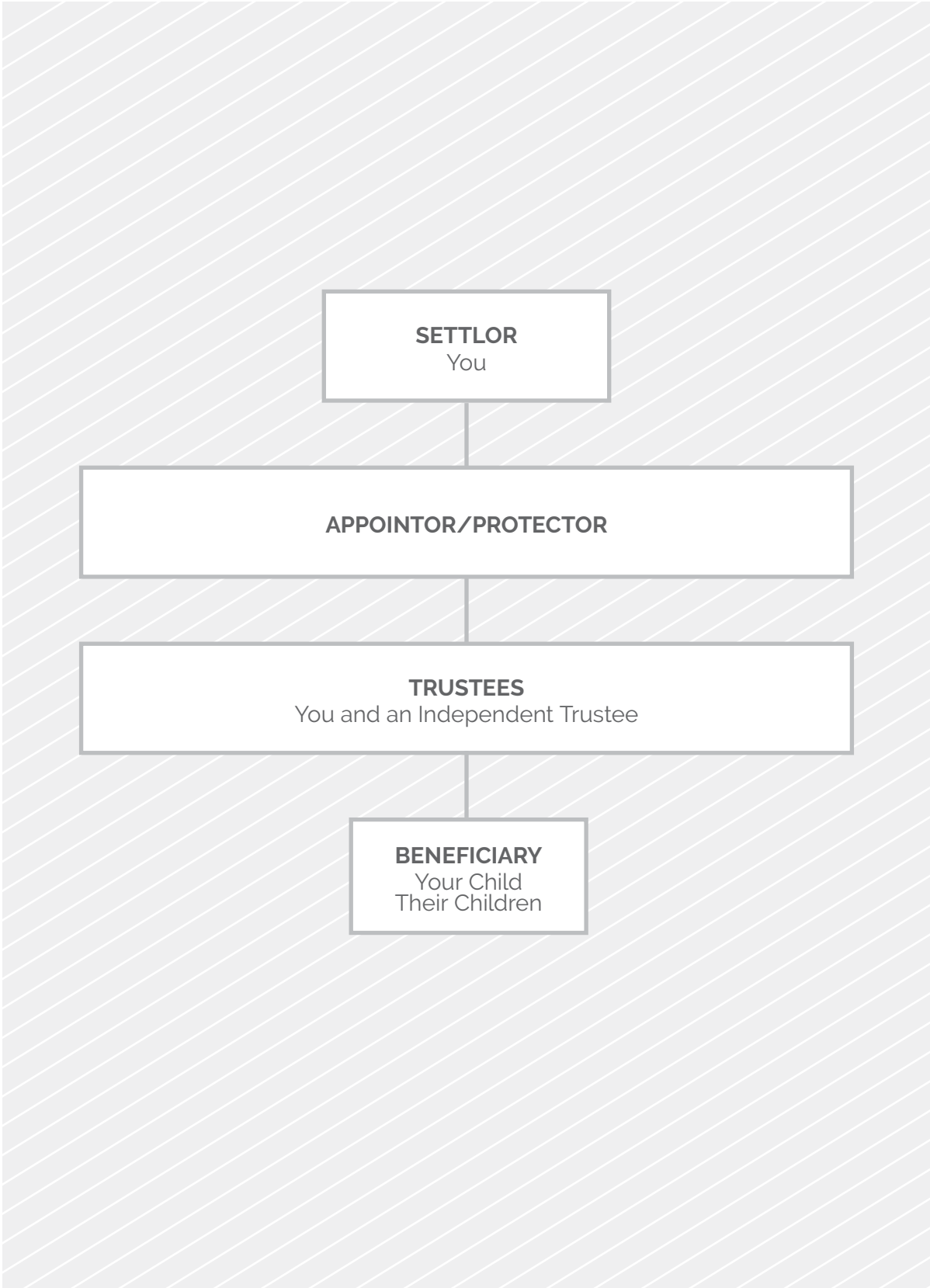


# Structure of a Single Trust

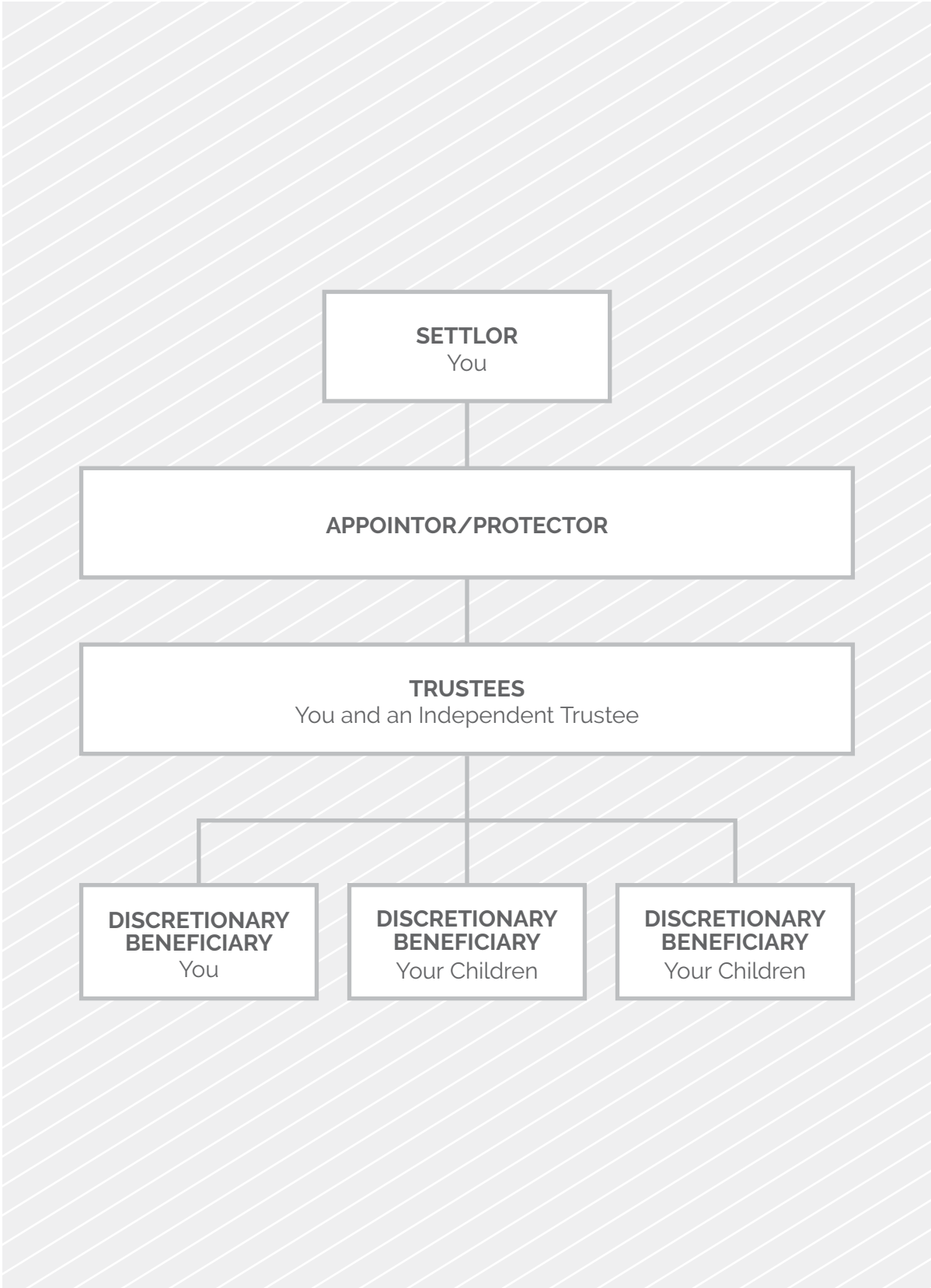




# Structure of an Inheritance Trust



# Structure of a Business Trust



# TRUSTGUARD Simple Steps to Peace of Mind

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**TrustGuard is a unique service which reviews the current situation of a Trust and makes recommendations to help ensure the Trust delivers on specified objectives.**

This service is for those clients who have a Trust created. Where New Zealand Trustee Services is not a Trustee nor has New Zealand Trustee Services had any involvement with the administration of the Trust to date.

## **TrustGuard Checklist**

A visual process guide to ensure the collection of all relevant information and documentation critical to the Trust review.

## **Recommendations**

The TrustGuard process will result in specific recommendations for each client which are designed to assist them in the administration of their Trust. Based on the client's documentation, recommendations may include:

- *Adjustment or preparation of documents to bring the administration of the Trust up to our standards.*
- *Based on the reasons why the Trust was created versus the present requirements of the clients, we may recommend the winding up of the Trust.*
- *We may suggest the resettlement of the assets to a new Trust, thus winding up the old Trust and ensuring that the new Trust receives all previously held assets, and that all gifting and capital gains are still protected.*

## **Options**

- *Take over administration, providing no major issues are discovered.*
- *Correct the administration where possible and take over the administration.*
- *Resettle assets into a new Trust and wind up the old Trust.*

# THE TRUSTGUARD REVIEW FORM

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This document enables a detailed review of the current situation of a Trust and makes recommendations to help the Trust develop and achieve specified objectives. The Trust Review Form is designed to establish the process for creating a successful, legally compliant Trust and covers a range of topics including;

- **INFORMATION FOR CONSIDERATION**
  - Trust Deed
  - Role of the Professional Trustee
  - Beneficiaries to the Trust, e.g.
    - *The settlors to the Trust;*
    - *The children of the settlors;*
    - *The grandchildren of the settlors;*
    - *Individuals related to the settlors by blood or adoption only;*
    - *Trusts that any discretionary beneficiary is a beneficiary of; and,*
    - *Charities.*
  - Assets held under Trust
  - Gifting
  - Clawback under insolvency legislation
  - The Will
  - Recording clients intentions for the Trust in a Memorandum of Wishes
  - Enduring Power of Attorney (EPA) for Property
  - Enduring Power of Attorney (EPA) for Personal Care & Welfare
- **OBJECTIVES OF SETTLOR(S) AND BENEFICIARIES**
- **TRUST DETAILS**
  - Name of Trust
  - Contact details
  - Name of settlor(s)
  - Name of Trustee(s)
  - Date Trust was established, etc.
- **TRUST'S CURRENT FINANCIAL SITUATION**
- **GENERAL OBSERVATIONS OF THE TRUST DOCUMENTS**
  - Trust Deed, etc.
- **TRUSTGUARD CHECKLIST**
  - Initial review of documents, assets, minute book etc.
- **RECOMMENDATIONS**
- **ESTIMATE OF COSTS**

# TrustGuard

Secure the objectives of your Trust

## 7 CRUCIAL QUESTIONS FOR YOU

**Unless you can answer YES to ALL of the following questions about your existing Trust, you may be risking the future of that Trust;**

1. Do you fully understand the content of your Trust Deed and the obligations it imposes on you (as a Trustee)?
2. Are you sure all assets owned by the Trust are held in the names of the current Trustees?
3. Does your Trust have its own bank account?
4. Are you sure all Trustee decisions have been recorded correctly and reflect the documents executed?
5. Do all the Trustees meet at least annually?
6. Do the Trustees maintain an up to date minute book?
7. Is your Memorandum of Wishes up to date and reflective of how you wish your Trust (to be used) in the event you are no longer able to give your voice?

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**If you answered NO to any of these questions, please contact us to discuss the security of your assets.**

**FREEPHONE 0800 698 787**

# THE SALE AND GIFTING PROCESS

1

## STEP 1 – SETTLOR

This person forms the Trust, which is governed by the document known as the Trust Deed.

2

## STEP 2 – ASSETS

The Settlor sells the assets to the Trustees by way of an Agreement for Sale and Purchase. The Settlor is the Vendor and the Purchaser is the Trustees.

3

## STEP 3 – TRUSTS

As the Trustees have legally agreed to purchase the asset they would normally be required to hand over a cheque to the Vendor to secure this purchase. Here the situation differs from an actual sale as the Trustees do not have the funds required to settle, therefore the Trustees will now sign a Deed of Acknowledgement of Debt – similar to an IOU.

4

## STEP 4 – DEBTS

This Deed of Acknowledgement of Debt records that the Trustees now owe back to the Settlor an amount equivalent to the assets being 'sold' to the Trust.

5

## STEP 5 – GIFTING

If we stop this process here, all the Settlor has effectively completed is a swapping of their assets. The Certificate of Title for a property will now be registered in the names of the Trustees of the Trust; with their asset being the Deed of Acknowledgement of Debt. At this stage you have not actually protected your assets; you have simply swapped them.

In order to protect these assets you now enter into a Gifting Programme, which is \$27,000 per annum per household. Therefore if one person is gifting in the household they may gift at \$27k per annum, however if there are two people living in the same household then gifting will be \$13,500 per person per annum, to fit Social Security Regulations.

*Note that when gifting, consideration must be given to the specific circumstances of each client and recommendations should be made on this basis not 'one size fits all' approach.*

*Also note this gifting is to be completed every 366 days (Reduction of Assets). Despite the Abolition of Gift Duty, many New Zealanders will still continue to reduce their asset by \$27,000 per annum per household. This is fully explained in the "Abolition of Gift Duty" along with the consequences of making gifts in excess of \$27,000 per annum per household.*

# ABOLITION OF GIFT DUTY

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## Gifts to Trusts - Post Gift Duty:

With the abolition of Gift Duty a Trustee needs to consider the manner in which gifts are accepted, either as one large gift or many smaller ones under a Gifting Programme. The main point is that a Trustee should receive the gift with 'clean hands' (to be sure in their knowledge that they can properly exercise the discretions given to them). To do this, a Trustee should be sure that the Donor (person making the gift) has the ability to make the gift without the fear of it being clawed back at a future stage. To do this, we believe it is appropriate for a Trustee to make proper enquiries of a Donor before accepting the gift.

## What are the Risks?

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### Business Trading

The clients business will trade unsuccessfully to a point where the Debts can no longer be serviced through income. At that point, a Receiver will be appointed to sell the Business Assets and use the proceeds to cover these debts. The client (personally) will be asked to make up any shortfall. **Law - Section 346 & 348 of the Property Law Act 2007 - Sections 204 & 205 Insolvency Act 2006.**

#### Question:

*At any stage, all trading Businesses have Debt. If the income stream from the Business were to suddenly cease would the client have sufficient assets to meet the current liabilities as they fall due? If so, would the disposition of property into a Trust change that position so that the client would no longer be able to cover the Debt?*

### Legal Actions

The Client provides advice or a service on which customers rely. The Failure of that advice or service would cause a loss to the Customer and the Customer would seek to recoup the loss from the Client. **Law - Section 346 & 348 of the Property Law Act 2007.**

#### Question:

*All Advisors or Service Providers have the potential of a claim being made against them. Is the client aware of any particular claim being brought against him/her at this time? If so, would the disposition of property into a Trust mean that the client would be unable to meet that claim if it were successful?*

### Separate Property

The client has separate property prior to a relationship forming. If that separate property is used within the relationship or contributions are made to it that may change the status of the asset to relationship property. **Law - Section 44 of the Property (Relationships) Act 1976.**

#### Questions:

1. *Is the client in a relationship?*
2. *If so, how long has the relationship been going?*
3. *Has the Partner done anything to add value to the property?*
4. *Has the Partner helped service debt on the property?*
5. *Has the Partner worked in the home to allow the Client to earn an income?*

## Succession Planning - Residential Care

The client has an important family asset which they want to pass on to a family member intact. Long term residential care may impact on the clients abilities to pass the property on intact. **Law – Section 9b of the Social Security (Long Term Residential Care) Regulations 2005.**

### Question:

*The Disposition of an asset into a Trust may remove the asset from your ownership, but would the client have sufficient resources outside the Trust to meet the costs of Long Term Residential Care? If not, would the client have to apply for a subsidy and would an 'Excess Gifting' assessment put the client over the exemption limit?*

### Note:

*Excess Gifting is not time bound (the above regulations are completely retrospective)*

## Succession Planning - Family Protection Act

If a client is wishing to significantly benefit one family member over the others, one large gift to an Inter-Vivos Trust may be the best way to achieve this without the risk of having the forgiveness of any residual Debt contested under the Family Protection Act 1955.

### Question:

*Does the client have any major assets they wish to pass on intact to one family member without equalizing these amongst the other family members?*

## Deeds of Gift

The forgiveness of any existing gift or the transfer of an asset requires a Deed to properly record the intention to gift. As Trustee, we believe that the Deed of Gift represents a good opportunity to record that the Trustees have considered all the relevant circumstances around the gift and believe that they can receive the gift without any obligation to any other party.

Apart from the practical matter of transferring the asset as Trustee, we will also record the following:

- *That after making the gift, the Donor has the ability to meet his/her debts as they fall due;*
- *That the Donor is not aware of any potential legal action that may be made against him/her and making the gift would not have result of prejudicing the Claimant;*
- *That the property being gifted is separate property and the gift would not deprive any partner of their property rights;*
- *That the gift is not being made with the purpose of gaining financial assistance from a Government Agency.*



# BUY/SELL AGREEMENTS

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**In New Zealand we are inundated with small to medium businesses with two to five Directors. Issues constantly arise when one party dies or becomes permanently disabled and the remaining business owners are faced with the reality that they now need to buy this individual's shares in the business.**

This causes tremendous financial problems for the business and in some instances can result in the ultimate failure of that business.

There are many complex issues surrounding the preparation of Buy/Sell Agreements and many Advisors lack the skills required to complete a detailed agreement and advise on an appropriate Business Succession Plan.

We have therefore developed a process which will allow businesses to continue after the death or permanent disability of a Director/Shareholder. This is via an appropriately structured document, commonly known as a Buy/Sell Agreement.

This is a concept that is certainly not new, but one rarely constructed in a correct manner. Often most Buy/Sell Agreements are poorly drafted and almost never reviewed. Generally this is due to the person who is drafting the Agreement having little understanding or knowledge about insurances and the effect these have on these Agreements.

Many Agreements, once executed, are not subject to a review process and as the Company grows in value the insurances in place could well be inadequate. Like all Agreements, they must be subject to an annual review.

The Buy/Sell Agreement is where the parties involved in the business that hold shares (including Trustees as Family/Business Trusts) agree on a process involved on the occurrence of certain predetermined events. As this Agreement is funded by insurances, the placement of this insurance should be implemented by a qualified Insurance Advisor.

The buying and selling of shares in this Agreement is usually in respect of the following 4 situations:

1. *Death;*
2. *Suffering TPD;*
3. *Suffering Critical Illness; and/or*
4. *Diagnosed with a Terminal Illness*

## Buy/Sell Agreement Notes

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New Zealand Trustee Services (Stakeholder) Limited is a company specially formed to hold stakeholder appointments primarily where a Buy/Sell Agreement is in place. It is the sister company of New Zealand Trustee Services Limited which is a Professional Independent Trustee and acts in a large number of Trustee Appointments throughout New Zealand.

### Why Use New Zealand Trustee Services (Stakeholder) Limited as a Professional Stakeholder?

- *We have NO vested interest in funds held;*
- *We provide security for the proceeds of the insurance claim until the funds can be distributed;*
- *We are removed from the pressures affecting your business; and*
- *We provide protection for all parties until the Agreement can be signed.*

### What Do You Get For Your Money?

- *Use of a Professional Independent Stakeholder;*
- *Completion of a Declaration of Trust from when the policy is issued until when the Agreement is signed;*
- *Plain Language Proposal Document detailing all key factors of the proposed Agreement;*
- *Fully comprehensive Agreement between all Shareholders and the Stakeholder; and*
- *Annual Review of the Agreement.*

### The Process

1. *Application for Insurance made and approved;*
2. *A detailed questionnaire for the Buy/Sell Agreement to be completed;*
3. *Declaration of Trust made when policy issued;*
4. *Plain Language Proposal Document issued with draft Buy/Sell Agreement; and 5. Buy/Sell Agreement signed and reviewed annually along with associated Insurances.*



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