

Trust Health Check

WHAT

In our experience working with trusts, many people set up a family trust because it seemed like a good idea at the time. The legal documents were signed up, but are often left in the bottom drawer to gather dust.

The trust was set up with good intentions—estate planning, protection from creditors, or to operate alongside a relationship property agreement. Yet when it comes time to call upon the trust's protection, things don't go to plan. Often, it's due to the management of the trust.

If you have a trust yourself or you're a trustee for someone else's trust, then our Trust Health Check might be appropriate for your situation.

It's designed to:

1. Identify and rectify any gaps in the historic documentation of the trust
2. Ensure that your wills and letter of wishes are (a) complete and (b) relevant
3. Complete any gifting documentation for wealth accumulated since you formed the trust
4. Confirm which assets are in the trust's name, and transfer the ownership of specific assets as needed
5. Check that all accounting and tax obligations for the trust have been met, and that the financials are up to date
6. Ensure that the trust is operating for the benefit of the right people

Once we've been through our initial review, we'll come up with a specific plan to get your trust back in shape, so that it protects you the way you expect if the time comes.

WHY

Trustees have specific duties under the trust deed, alongside both current and pending legislation.

These duties include:

1. Knowing the terms of the trust
2. Acting honestly, in good faith, and (importantly) in line with the trust deed
3. Keeping specific information relating to the trust, including the trust deed, trustee resolutions, accounting records, letters of wishes and more
4. Ensuring that the trust is managed properly, and not just "rubber-stamping" historical decisions. Trust law is changing, making proper governance critical (all trustees will be held to the same standard, irrespective of if you're a lawyer or just helping out a friend)

Beneficiaries of trusts also have specific rights, which are to broaden under legislation before Parliament.

These rights include:

1. To be told that they are a beneficiary of the trust
2. To be considered to benefit from the trust – you don't have to distribute assets to them, but you must consider them when making decisions
3. To access basic information from the trust, including a copy of the deed, resolutions, details of who the trustees are, and the assets or liabilities of the trust
4. To enforce the proper management of the trust by the trustees

WHAT WE ASK

Given that these obligations and rights have evolved over time, what was appropriate for your trust when it was formed might not be appropriate now. We'll work through what you want for your trust, based on your situation today and pending law changes, and then get your trust into shape.

This involves:

- Establishing whether the reasons you set the trust up are still relevant today
- Identifying who you want to have access to information, and to potentially benefit, from your trust
- Working out how your trust fits in with your broader asset and estate planning, including your wills, letter of wishes, and any relationship property agreements (sometimes called a "pre-nup" or contracting out agreement)
- Covering any gaps in your legal documentation and accounting records to ensure your obligations (which fall on you personally as a trustee) are covered

NEXT STEPS

If a Trust Health Check is something you would like to discuss further, then book an appointment (convexaccounting.co.nz/appointments or convexlegal.co.nz/appointments) to come in and work through your situation.

Our initial consultation is at no-charge and no-obligation. We won't be able to answer everything on the spot, but we'll give you a general steer, and come up with a fixed price for us to progress things with you.

Disclaimer:

This document is general in nature and not intended as a substitute for specific, professional advice on any matter. Please check with us prior to relying on any aspect of this document.

