

## **TRUSTEES**

What do you look for in a Trustee?

What are your responsibilities and what do you need to do?

I have seen people appointed to Family Trusts and as Trustees of Wills and have been aware that they have made some terrible decisions. This has prompted me to pen this story.

I have knowledge of, where two Trustees were entrusted to look after a large farm that had not been well maintained. They spent every cent that was in the coffers to tidy up the farm, as they, the Trustees thought they would have it, new fences, races, buildings and so on.

It made the property look better but did not improve the productivity of the farm.

The Trustees then put their own stock on the farm. To cap it off the Trustees then favoured one beneficiary under the Trust to take over the property.

Trusts are a fantastic vehicle to carry land from one generation to the next. However, you are dependent on the Trustees who will act on your behalf when you have vacated this earth, to make the right decisions and to look after the asset for you.

The selection of good Trustees is crucial.

Selection of Trustees – they need to:

- be able to look at things objectively;
- understand commerce, accounting and basic legal matters;
- not be aged and be able to function properly;

- understand what the settlor wanted from them;
- be objective, and not look at things from their own point of view; and
- be able to stand up to persuasive members of the family.

Selection of a family member as a Trustee can be good but sometimes they may find it hard to be objective.

I know of a case where an ex wife of a Settlor of a Trust, tried to influence the settlor's own brother, who was a Trustee, away from buying more real estate following a marriage breakup.

Why? Because, she being the estranged wife, didn't want her ex partner to progress forward. Needless to say the brother had to be removed as a Trustee. He was no longer objective. He was supposed to be acting for the Trust but the Settlor's ex wife was able to influence him.

Some peoples' greed seems to be more prevalent these days.

Family members will see an opportunity to prosper and will chase that opportunity with little regard for other family members' wishes or what is fair.

A Trustee has to be mentally strong enough to stand up to these types of people and that kind of thing, and to remain fair and objective.

Trusts usually have two Trustees. Your solicitor will ask you to nominate two Trustees. Do not make this decision in haste.

Take time and go away and think about the decision. Talk to the people whom you are considering as Trustees. Make sure that they have you and your family's best interests in mind.

Some Solicitors do not normally make good Trustees. They tend to look at everything from a legal point of view. They are inclined to be pedantic and litigious rather than objective.

Accountants often make better Trustees. They may have a more realistic understanding of the issues, and will look at these from an accounting aspect.

Because of the liability of a Trustee regarding unpaid GST and Tax, accountants are often more aware of issues that may arise. They also often have a better understanding of the day to day activities of the business, and can often be more familiar with the family.

Some Trustees may have a Trustee Company that they operate from. The Trustee company offers some protection should a claim be made against the Trustees and/or the Trust.

Independent Trustees who have a wide experience in all aspects of farming and business are often more ideal.

They need to have time to consider what is best and what the Settlor may have wanted.

They are likely to charge for time in attendance but you expect to pay any professional person for advice anyway.

The key points in selection of a Trustee are:

- Objectivity
- Independence
- A good understanding of people, law and accounting issues
- Experienced and not aged
- Live within easy commuting distance if possible

There are a lot of scurrilous people out there who see opportunity rather than fairness and objectivity.

You are dependant on their decision-making ability when you have vacated this planet.

Selection of a suitable Trustees for your Trust is a very important decision and not to be made lightly.

These are the opinions of Don Fraser of Fraser Farm Finance. Any decisions made should not be based on this article alone and appropriate professional assistance should be sought.

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