

Your guide to creating your estate and asset protection plan

**- crafting a personalised plan to
protect your legacy**



Your estate and asset protection plan - crafting a personalised plan to protect your legacy

Your wealth represents a lifetime of hard work, dedication, and the dreams you've nurtured.

At Ross Holmes Virtual Lawyers Limited, we understand the importance of preserving and protecting your assets. Our boutique law firm, based in Auckland, New Zealand, specialises in trust-based asset protection plans and will-based estate plans.

Our comprehensive guide to trust-based and will-based estate and asset protection plans will empower you to make informed decisions that benefit you and your loved ones.

Safeguarding your legacy: Estate and asset protection planning

Why Estate and Asset Protection Planning Matters

Estate and asset protection planning is the key to securing your wealth and ensuring its seamless transition to future generations. By legally organising and structuring your assets, you shield them from potential risks, creditors, lawsuits, and financial liabilities. It's your proactive approach to safeguarding what you hold dear.

Key elements and strategies for your estate plan

Wills and Trusts: Building a solid foundation

A will serves as your voice beyond the grave, specifying how your assets should be distributed upon your passing. Our team of experts will guide you through the intricacies of will creation, ensuring your intentions are preserved. Trusts, on the other hand, offer unparalleled protection by holding assets for beneficiaries under the watchful eye of a trustee in a manner that achieves your objectives.

Limited liability entities: Separating and securing

We understand the importance of maintaining a clear boundary between your personal and business assets. Establishing limited liability entities, such as limited liability companies, shields your personal finances from business-related debts and obligations. This separation of liabilities empowers you to make bolder business decisions with peace of mind.

Limited Partnerships (LPs): Consolidating and protecting

Consolidating family assets becomes a breeze with limited partnerships (LPs). These invaluable tools provide centralised management of your family wealth while simultaneously offering limited liability protection to partners. It's the perfect harmony between growth and security.

Insurance: Building a safety net

Life is unpredictable, but you can prepare for the unexpected. Adequate insurance coverage, including life insurance, liability insurance, and income protection insurance, forms a safety net that shields you from unforeseen events.

Superannuation: Your shielded future

In New Zealand, the KiwiSaver scheme ensures that your superannuation funds remain protected from potential creditors while they reside within the fund. It's an additional layer of security for your retirement nest egg.

Gifting and wealth transfer: Securing your legacy

Structured gifting and wealth transfer strategies provide a robust defense for your assets. By transferring assets to trusts or family members during your lifetime, you proactively protect your wealth for future generations. Our expertise in this area ensures that your wishes are respected.

Trust-based or will-based estate plans: Making the right choice

Estate planning is a crucial step towards securing the future of yourselves and your loved ones and ensuring your wishes are carried out. At Ross Holmes Virtual Lawyers Limited, we understand the importance of making the right choice for your unique circumstances.

When it comes to estate plans, there are two primary options to consider: trust-based estate plans and will-based estate plans. Each option offers distinct benefits, and finding the one that aligns with your goals requires thoughtful consideration.

To gain a deeper understanding of these options, we encourage you to delve into this comprehensive *Guide: Your estate and asset protection plan - crafting a personalised plan to protect your legacy*. It will provide you with the foundational knowledge necessary to make an informed decision. And remember, our team of estate planning experts is here to assist you every step of the way.

Your path to peace of mind

Estate and asset protection planning is a meticulous process that requires the guidance of professionals specialising in this field. At Ross Holmes Virtual Lawyers Limited, we excel in breaking down complex legal concepts into easily understandable terms. We take the time to listen, understand your unique needs, and provide down-to-earth guidance, empowering you to make informed decisions.

Join our family of clients who have experienced the transformative power of a comprehensive estate and asset protection plan. Together, we'll create a legacy that stands the test of time.

Our services are available to clients throughout the country, utilising email, Zoom, in-office meetings and telephone consultations. Additionally, we offer online trust and trust administration webinars for your convenience.

Contact us today to embark on your journey towards a secure future.

Introducing our Managing Director Ross Holmes

As the Managing Director of Ross Holmes Virtual Lawyers Limited, Ross Holmes brings a wealth of knowledge and experience to the table. With a background as a contributing author to Lexis Nexis "*Law of Trusts*" and a membership in STEP London, Ross has established himself as an expert in the estate planning field. He has authored several books on trusts.

Trust-based estate and asset protection plans: The power of trust

Trusts have long been recognised as a powerful tool for preserving wealth, ensuring privacy, and protecting assets. Our trust-based estate and asset protection plans provide a secure framework for managing your affairs, both during your lifetime and after. By placing your assets in a trust, you establish a legal structure that can shield them from potential risks, such as lawsuits, creditors, and unforeseen financial challenges.

The components of a Trust-based estate and asset protection plan are:

1. **A Trust:** Establishing a trust forms the foundation of your plan. It creates a legal structure that holds and manages your assets, allowing you to retain control while gaining the benefits of protection.
2. **Memorandum of Wishes:** This document captures your intentions and desires regarding the management and distribution of your assets, ensuring that your wishes are respected and followed.
3. **Enduring Powers of Attorney:** By appointing trusted individuals as attorneys for property and welfare, you empower them to make important decisions on your behalf should you become incapacitated.
4. **Advance Health Care Directives:** These directives, including a living will, enable you to express your healthcare preferences, ensuring that your medical treatment aligns with your values and desires.
5. **Wills:** Although trusts are a powerful tool, wills still play a crucial role in your estate plan. They allow for the distribution of specific assets and provide instructions for the guardianship of your minor children.
6. **Funeral Directives:** Clearly outlining your funeral and burial preferences in advance alleviates the burden on your loved ones during a challenging time.
7. **List of digital assets and devices:** In the digital age, it's crucial to account for your digital assets and devices in your estate plan. By documenting these assets, such as online accounts, cryptocurrencies, and electronic devices, you facilitate their proper management and distribution.
8. **Directory of Important Contacts:** This resource consolidates essential information, ensuring that your appointed trustees and executors can readily access key individuals involved in your affairs.
9. **Minute Book and Running Instructions:** These documents serve as a record of the trust's activities, ensuring transparency and facilitating seamless administration.
10. **Review of Current Asset Ownership:** Our team conducts a thorough

evaluation of your existing asset ownership to determine what should be transferred to the trust for enhanced protection.

11. Deed of Sale of Assets and Loan: If necessary, we facilitate the sale of assets from you to the trust, securing their rightful place within the protective structure.
12. Deed of Gift: In certain cases, we assist in gifting all or part of the loan owed to you by the trust resulting from the sale of assets, further solidifying the trust's ownership.
13. Relationship Property Agreement: When embarking on a new partnership, we provide a relationship property agreement to safeguard pre-relationship assets and protect the interests of the trust.

Tailor-Made Trusts for Your Unique Circumstances

At Ross Holmes Virtual Lawyers Limited, we understand that every individual or family has specific needs and objectives when it comes to estate planning. That's why we offer a range of trust options, all tailored to suit your circumstances. Let's explore some of the trust types we can create for you:

Family Trusts:

Family trusts are discretionary trusts typically established by couples or single individuals. The settlor(s) are usually the primary beneficiaries, with children or other loved ones ranking second and their descendants ranking third. Secondary beneficiaries receive inheritance only if all other beneficiaries pass away.

Parallel Trusts:

Parallel trusts are two trusts created by couples entering a new relationship. Each partner establishes their own trust to keep their pre-relationship assets separate. This ensures that their respective trusts retain those assets in the event of separation and guarantees their loved ones ultimately inherit their trust. Provisions may be included for the partner, such as the right to reside in the trust's home or be maintained on defined terms after the settlor's death. These provisions typically cease in the event of permanent separation or if the partner enters a new relationship after the settlor's passing.

Defined Interest Trusts:

Defined interest trusts are often established by individuals entering a new relationship or couples embarking on a new partnership. These trusts prioritize the settlor or couple during their lifetime, granting them the right to live in the trust's home(s) and ensuring their welfare is looked after. After their passing, the other beneficiaries are assigned defined interests, such as the right to reside in the trust's home or be maintained on defined terms. Provisions for the partner cease in the event of permanent separation or if the partner enters a new relationship after the settlor's death. The trust then stipulates the percentages in which other beneficiaries or trusts established for their benefit inherit the trust funds.

Multi-Generational Trusts:

Multi-generational trusts are designed to preserve wealth for the benefit of loved ones and future generations. They are particularly suitable for individuals with a

single child. Historically used by wealthier families, these trusts have proven their efficacy in achieving long-term wealth preservation.

Inheritance Trusts:

Inheritance trusts are a specialised type of trust designed to protect and manage the transfer of assets to beneficiaries upon your passing. You can establish clear guidelines for the distribution of assets, minimising the potential for conflicts and fostering family harmony. You have the power to determine how and when your assets will be distributed, providing a level of control and protection over your estate. By placing assets within the trust, you shield them from potential risks such as lawsuits, creditors, or imprudent financial decisions by beneficiaries. This ensures that your hard-earned assets remain intact and continue to benefit your loved ones for generations to come. Inheritance trusts are a powerful tool to safeguard your assets, protect your loved ones, and ensure your legacy endures.

Business Trusts:

Business trusts are established for investments where it may be too risky for the main trust to directly own the asset. For example, ownership of shares in a private company may require shareholders to provide guarantees to creditors. Business trusts confine the beneficiaries to the principal beneficiaries and the family trust, offering a separate structure for business investments.

Additionally, we can assist with other specialised trust types, such as funeral trusts, inheritance trusts, injury and compensation trusts, life insurance trusts, pet trusts, and special disability trusts. Whatever your unique circumstances may be, we will tailor a trust to meet your specific needs.

Ross Holmes Virtual Lawyers Limited can provide you with a custom-tailored trust solution that aligns perfectly with your objectives and safeguards your assets, preserves your wealth, and secures a prosperous future for your loved ones.

Trust-based estate and asset protection plans offer unparalleled peace of mind, ensuring that your wealth remains secure and your wishes are honored. At Ross Holmes Virtual Lawyers Limited, our expertise and attention to detail enable us to tailor a comprehensive plan that addresses your unique circumstances.

Will-based estate plans: Crafting your legacy

While trusts offer numerous advantages, will-based estate plans also play a vital role in securing your legacy. A will serves as a clear roadmap for distributing your assets, naming guardians for your children, and expressing your final wishes. Our experienced estate planning team will work closely with you to draft a will that reflects your unique circumstances, ensuring that your intentions are respected and your loved ones are protected.

Crafting Your Legacy: The Elements of a Will-Based Estate Plan

Let's explore the essential components of a will-based estate plan:

1. **Wills:** Wills are the foundation of your estate plan. They allow you to specify how your assets should be distributed, designate beneficiaries, and provide instructions for the guardianship of your minor children. With a well-drafted will, you can shape the future of your estate according to your wishes.
2. **Enduring Powers of Attorney:** Appointing trusted individuals as attorneys for property and welfare empowers them to make decisions on your behalf if you become incapacitated. This ensures that your financial affairs and personal well-being are managed by individuals you trust.
3. **Advance Health Care Directives:** These directives, including a living will, enable you to express your healthcare preferences. By outlining your treatment choices, you ensure that medical decisions align with your values and desires, even if you're unable to communicate them.
4. **Funeral Directives:** By clearly outlining your funeral and burial preferences in advance, you alleviate the burden on your loved ones during a challenging time. Your directives help guide your family in honoring your final wishes and ensure that your funeral arrangements reflect your unique desires.
5. **List of Digital Assets and Devices:** In the digital age, it's crucial to account for your digital assets and devices in your estate plan. By documenting these assets, such as online accounts, cryptocurrencies, and electronic devices, you facilitate their proper management and distribution.
6. **Directory of Important Contacts:** This resource consolidates essential information, providing your appointed trustees and executors with easy access to key individuals involved in your affairs. It includes contact details for financial advisors, attorneys, accountants, and other relevant parties.

A well-crafted will-based estate plan ensures that your assets are distributed according to your wishes, your healthcare decisions align with your values, and your loved ones are supported during difficult times. At Ross Holmes Virtual Lawyers Limited, our experienced team is dedicated to helping you navigate the complexities of estate planning, ensuring that your legacy is preserved and your intentions are honoured.

The differences between a will based estate plan and a trust based estate plan

It is essential that you have either a trust based estate plan or a will based estate plan.

Real-life examples showing the differences between a Will-based estate plan and a Trust-based estate and asset protection plan

Will-Based Estate Plan:

Example: The impact of probate process

John passed away without a trust, leaving behind significant assets. His family had

to go through the probate process, which currently takes 4 to 6 months to complete. During this time, his estate assets were frozen, causing financial difficulties for his widow Jill who needed access to his estate assets to pay for her necessities of life. This situation could have been avoided with a trust-based estate plan.

Example: Vulnerability of beneficiaries' inheritance

Sarah inherited a substantial sum of money from her parents through a will-based estate plan. However, she had accumulated significant debt over the years. As a result, a large portion of her inheritance was seized by creditors to satisfy her outstanding obligations. If her parents had established a trust, her inheritance could have been protected from such claims.

Example: Long-term care costs depleting inheritance

Robert, who received an inheritance through a will, later required geriatric care due to health issues. Under government regulations, his inherited assets were used to pay for his care costs, significantly reducing the amount available for him to enjoy and pass on to future generations. Trust-based estate planning could have protected his assets from being depleted in this manner.

Trust-Based Estate Plan:

Example: Asset Protection during Lifetime

Jennifer, a successful business owner, had her assets held within a trust. When her business faced unexpected financial difficulties, creditors were unable to seize her personal assets held in the trust. This safeguarded her wealth and allowed her to continue providing for her family and maintaining financial stability.

Example: Preserving inheritance for future generations

The Thompson family, comprising several generations, established a multi-generational trust to preserve their wealth. By keeping their assets within the trust, they ensured that future family members would benefit from the accumulated wealth, protecting it from potential risks and ensuring its longevity.

Example: Avoiding probate

Emma's parents had set up a trust-based estate plan, allowing their assets to be transferred directly to the trust upon their passing. As a result, their estate did not require probate, saving time and costs for the family.

These real-life examples illustrate the practical implications and benefits of choosing either a will-based or a trust-based estate plan. While wills offer simplicity and immediate effectiveness upon death, they can expose assets to risks and limitations during your lifetime and after your death. On the other hand, trust-based estate plans provide asset protection, privacy, flexibility, and longevity, ensuring that assets are preserved for beneficiaries while mitigating potential challenges. Consulting with our experienced team at Ross Holmes Virtual Lawyers Limited can help you determine the best approach for securing your assets and protecting your loved ones' future.

The differences between a will-based estate plan and a trust-based estate plan

The differences between a will-based estate plan and a trust-based estate plan can be summarised as follows:

Will-Based Estate Plan:

Pros:

1. The will takes effect upon your death, ensuring that your loved ones inherit your important assets as directed by you.
2. Allows you to appoint guardians for your minor children.
3. No new bank account or taxation return is required for investments.

Cons:

1. Your will is automatically revoked upon marriage unless it explicitly states otherwise. This does not occur with assets held in a trust.
2. Probate is usually required for assets worth more than \$15,000, which can be a lengthy, expensive, and public process. Until probate is obtained, estate assets are frozen, except for funeral costs. Executors cannot safely distribute the estate until six months after your death. These issues can be avoided with a trust.
3. The court can change your will after your death under certain circumstances, such as claims under the Family Protection Act and the Law Reform (Testamentary Promises) Act.
4. A will does not protect your important assets from risks during your lifetime.
5. Beneficiaries inherit regardless of their circumstances, and their inheritance is not immune to claims by others, such as creditors or government costs for geriatric care.

Trust-Based Estate Plan:

Pros:

1. A trust provides protection for your important assets during your lifetime.
2. The provisions of the trust deed are legally binding after your death, and the trust cannot be changed by the courts under the Family Protection Act. Only personally owned assets and loans owed to you by the trust form part of your estate.
3. Offers asset protection benefits and ensures that your loved ones safely inherit your assets, shielded from external claims.
4. Trust administration is generally faster, less expensive, and more private than the probate process. The trustee can be instructed to hold funds in the trust for specific purposes outlined in the trust deed.

Cons:

1. There are additional costs associated with establishing a trust-based estate plan compared to a will-based estate plan.
2. Administration costs may apply if you have an independent trustee.
3. The trust may require an additional taxation return if it is a taxpayer.

4. Trusts with investments necessitate a separate bank account and diligent management to avoid mixing trust and personal assets. However, our trust-based estate plans include detailed instructions and template minutes to facilitate trust administration.

It is important to note that a trust is the only alternative to a will in structuring your estate plan. Considering the pros and cons, it is crucial to consult with professionals, such as the team at Ross Holmes Virtual Lawyers Limited, to determine the best approach for your unique circumstances and goals.

The mistakes which are frequently made when setting up trust based estate plans

Bill and Joan's Trust - the dangers of a trust deed only

Bill and Joan, a married couple, were buying a new home decided to establish a trust to protect their assets and provide for their children's future. Their property lawyer Denis only prepared a trust deed for them with his firm's trustee company as an independent trustee. No deeds of Loan were prepared for the \$800,000 they lent to the Trust to purchase the property, no initial gifting of the loans was prepared, and no new wills leaving their estates to their new Trust were prepared. Denis was too busy and did not have the technology set up to enable him to prepare a complete asset protection plan.

Consequences of Failure to Gift and Lack of Will:

Denis, as the independent trustee of the Trust, did not contact Bill and Joan about the Trust after it was formed. Unfortunately, events which the Trust should have protected against arose, leading to horrific consequences:

Inheritance Issues:

When Bill passed away without a will, his assets were subject to intestacy laws. As a result, Joan, as Bill's spouse, inherited the \$400,000 loan he had made to the trust for property purchase. This loan now became one of her assets, and the Trust as a result owed her \$800,000. If Bill had prepared a will leaving his assets to the Trust his \$400,000 would have been safe in the Trust when he died.

Joan's geriatric care and trust debt:

Tragically, Joan suffered a stroke, which necessitated her admission to geriatric care. Moreover, since the trust had not gifted the \$800,000 loaned by Bill and Joan, the trust still owed Joan \$800,000 from the loan. The cost of Joan's care was significant, and under government regulations, her loan of \$800,000 to the Trust was used to cover her care expenses.

Consequences of not gifting:

By failing to gift the \$800,000 to the trust, Bill and Joan missed out on the opportunity to separate those funds from their personal estate. Consequently, the remaining loaned amount became a debt owed by the trust to Joan. All but the exempt amount of \$273,628 needed to be paid for Joan's geriatric care costs.

The consequences of not using a trust specialist:

Most non-trust specialists (lawyers and accountants) do not have the technology or the expertise to prepare a comprehensive trust based estate plan. The situation outlined above highlights the importance of having a comprehensive trust-based estate plan prepared by a trust specialist who can assist you to protect your assets and ensure a smooth transition during challenging times.

Securing your legacy: Protecting your assets today and tomorrow

It's disheartening to see the potential disasters that can arise when important estate planning safeguards are overlooked. At Ross Holmes Virtual Lawyers Limited, we believe in proactive planning to shield you from unexpected setbacks.

Consider the following scenarios:

Shielding your wealth from partners:

Without a well-prepared trust-based estate and asset protection plan in place, payments to former partners can become an unfortunate reality, jeopardising your hard-earned assets. We aim to protect your wealth, ensuring that your financial resources are safeguarded and allocated according to your wishes.

Blended families bring unique dynamics and complexities that require careful planning to ensure that your assets are distributed according to your wishes.

Kim's story

In 2004, Kim, who was then single, purchased a home worth \$600,000 with a mortgage of \$400,000. After talking with her family she decided against establishing a trust. In 2006 Kim's new partner Keith moved in. Fast forward to 2007 when Kim received a \$400,000 inheritance from her mother's estate and paid off the mortgage. However, after 4 years together, Kim and Keith separated in 2010. With the house now valued at \$800,000, Keith was entitled to 50% of the equity, \$400,000, causing Kim potential financial strain and emotional turmoil.

Janet's dilemma

In 2004, Janet formed a trust to buy a \$600,000 home with a \$400,000 mortgage. Unfortunately, her trust was poorly prepared, as it included future partners as beneficiaries. In 2006 Janet's new partner Jason moved in. Janet's trust received a \$400,000 distribution from her mother's trust in 2007, paying off the mortgage. However, after four years, Janet and Jason separated in 2010. Jason took legal action, successfully removing Janet as the trustee of the trust and appointing the Public Trust as the trustee. The discretionary beneficiaries, Janet and Jason as the trust's discretionary beneficiaries, were now subject to the Public Trust's discretion, as to how the trust's assets were to be distributed.

Preventing unintended consequences in blended families:

Joseph and Daisy entered a marriage, blessed with two children. Sadly, Joseph

passed away, leaving Daisy as the sole inheritor of his estate including their home. Subsequently, Daisy married Henry, who had a son of his own. Together, they sold their previous homes and purchased a jointly owned property. However, when Daisy passed away in 2009, the jointly owned home automatically passed to Henry through survivorship, disregarding the intentions expressed in Daisy's will. Eventually, when Henry died, his will left his estate to his son. Daisy's children received nothing.

The Solution: Real life examples speak volumes:

Imagine if Kim and Janet had established trusts that excluded future partners as beneficiaries before Keith and Jason entered their lives. The homes they purchased, along with the inheritance received, would have remained their separate property, shielded from relationship claims. Keith and Jason would have been left with no entitlements.

In retrospect, had Joseph and Daisy established a trust and used the trust to purchase their property they would have secured a favorable outcome for their children. The trust could then have purchased the 50% share in the property with Henry owning the other 50%. This strategic move would have safeguarded the trust's share for the benefit of Daisy's children, as the trust's surviving beneficiaries.

Statistics on Relationship Failure:

Did you know that in 2019 alone, New Zealand experienced 8,391 divorces, while there were 19,416 marriages among New Zealand residents? The general marriage rate dropped to a record low, with only 10 couples per 1,000 people eligible to marry. When considering de facto relationship failures, the failure rates are even higher.

According to Statistics New Zealand in 2019 5,268 out of 19,071 marriages of New Zealand residents or 28% are remarriages.

Protecting Your Personal Assets: Smart Business Planning

Even the most seasoned business people can be blindsided by unforeseen economic challenges. With a trust-based estate and asset protection plan, we help you weather the storms, providing strategies that shield your business from potential risks and keep you on the path to success.

Mark and Joy's experience

Mark and Joy embarked on their business journey in 2000, setting up a company where they both served as directors. Mark and Joy guaranteed the company's lease and creditor's accounts. The company was profitable until 2020. Tragically, in 2020, as a result of Covid lockdowns the company faced financial difficulties, accumulating \$200,000 in debts. With a lease still in place for four more years, with lease rental of \$100,000 per year, which the company could not pay, both Mark and Joy found themselves bankrupted.

The Solution: Strategic Business Planning

Let's explore how strategic business planning could have made a significant

difference for Mark and Joy:

Directorship Considerations: By appointing only Mark as a director, the burden of guaranteeing the lease and creditor's accounts would have fallen solely on him. This approach would have shielded Joy from personal liability, safeguarding her personal assets from potential claims.

Market Rate Salary and Surplus Profits: Mark and Joy could have structured their business to ensure that they received a fair market rate salary. Additionally, if they had a trust as the shareholder any surplus profits could have been distributed to the trust. By channeling surplus profits to a trust in the good years, Mark and Joy would have effectively protected those profits. In the unfortunate event of business failure, the trust and Joy's personal assets would have remained secure. The only asset exposed to claims would have been Mark's loans to the trust, provided they were not gifted more than five years prior to his bankruptcy.

Statistics on Bankruptcies:

The prevalence of bankruptcies underscores the importance of taking proactive measures to protect your personal assets. According to the Insolvency & Trust Service, there were 1,107 bankruptcies reported from July 2019 to June 2020.

Preserving your assets for your golden years

Aging gracefully is accompanied by its own set of concerns, particularly the erosion of a lifetime's savings due to geriatric care costs. Our comprehensive trust-based estate and asset protection planning approach accounts for these challenges, offering solutions to preserve your financial security throughout your retirement.

Jill's experience:

In 2008, Jill suffered a stroke at the age of 67, necessitating her move into a rest home. With a home valued at \$600,000, Jill faced the implications of geriatric care means testing. Unfortunately, only \$200,000 (now \$273,628 as at 1 July 2023) was exempt from geriatric care means testing, leaving her responsible for covering for first \$400,000 of her substantial care costs.

The Solution: Moana's strategic moves:

In 1990, at the age of 47, Moana made a prudent decision to sell her house to a trust when it was valued at \$300,000. This key action laid the foundation for protecting her assets. When Moana entered care in 2010, her house was worth \$600,000, and the increase in the home's value was shielded from geriatric care means testing, preserving \$300,000. (Remember, assets can double in value every 20 years with just 4% inflation.)

Additionally, Moana wisely made 11 annual gifts of \$27,000, completed in 2001 when she was 58. By doing so, she ensured that these gifts were made more than five years before applying for the residential care subsidy, further securing her eligibility.

Thanks to her strategic planning, Moana successfully qualified for the residential

care subsidy. This critical financial support provided the necessary assistance during her stay in the rest home, allowing her to focus on her well-being rather than worrying about exorbitant care costs.

Missed Geriatric Care Protection for Mark and Veronica:

Let's explore Mark and Veronica's story, highlighting the implications of their decision and the potential missed opportunities for geriatric care protection:

In 1985, Mark and Veronica, wise at the age of 40, made a prudent move by selling their house to their trust when it was valued at \$250,000 and lending the trust the purchase price of \$250,000. They fully gifted that loan to the Trust over the subsequent years so that the Trust owed them nothing. Fast forward to 2020, when they decided to embark on a new phase of retirement living by purchasing a \$1,000,000 apartment in a retirement village. This choice would enhance their retirement experience, as the village offered fantastic facilities tailored to their needs. However, due to the village's policies it could only be owned by Mark and Veronica personally, and not by their trust. To fund the purchase, they sold the trust's home for \$1,500,000, leaving them with \$500,000 left over for savings and their new apartment.

The Misguided Advice:

Seeking guidance from their property lawyer, Mark and Veronica were informed that trusts no longer provided protection against geriatric care costs. Based on this advice, their property lawyer prepared the documents winding up their trust. Their lawyers incorrect advice means that if they require rest home care they will no longer qualify for the residential care subsidy.

The Solution: Geriatric Care Protection for Mark and Veronica:

Had Mark and Veronica retained their trust, the \$1,250,000 increase in the value of the property and their initial \$250,000 loan to the trust which they had gifted to the trust would have remained secure within the trust. The trust should have lent them the funds to purchase the apartment secured by a deed of loan, so the value of their interest in the apartment was nil. The \$500,000 of investments should have been made by the trust. This expert advice would have preserved their eligibility for the residential care subsidy, offering valuable financial assistance in the event that they require rest home care.

Lets look at the difference a trust-based estate plan can make to geriatric care costs

Gifted assets longer than 5 years ago

MSD won't count up to \$27,000 a year of any assets you and your partner (even if they have died) have gifted longer than 5 years ago (from when you apply for the subsidy).

Gifted assets in the last 5 years

MSD won't count up to \$7,500 of assets and your partner (even if they've died) have gifted each year in the last 5 years (from when you apply for the subsidy). If your partner applies at the same time only, this amount will double to \$15,000.

Let's take the case of a couple aged 50 with and without a trust, one of whom dies, and the other goes into care in 20 years at age 70, with inflation at 4%:

With trust		Without trust
\$500,000.00	House now worth	\$500,000.00
\$500,000.00	Value of parties' interest in house in 20 years with 4% inflation	\$1,000,000.00
\$400,000.00	Term deposits	\$400,000.00
\$450,000.00 will of deceased = to Trust	Wealth of survivor in 20 years, after death of 1 partner	\$1,400,000.00 will of deceased = to partner
	Exemptions from geriatric care where 1 dead & the other in care:	
	\$273,628 plus	
	CPI increases x 20 years	
\$273,628 plus CPI increases for 20 years	Total exemption:	\$273,628 plus CPI increases for 20 years
\$273,628 less CPI increases for 20 years	Amount which must be paid for geriatric care costs before residential care subsidy	\$1,126,372 less CPI increases for 20 years
	Exemption for gifting:	
\$405,000.00	15 years x \$27,000.00	\$0.00
\$37,500.00	5 years x \$7,500.00	\$0.00
\$442,500.00	Total gifting exemption	\$0.00
All assets exempt from geriatric care means testing		Does not qualify for residential care subsidy

Veronica and Maximus's Scenario:

Let's delve into Veronica and Maximus's situation, highlighting the importance of trust-based planning when it comes to geriatric care and asset protection:

Veronica and Maximus, who are both 80, jointly own a house valued at \$500,000, along with limited savings. Currently, if one of them passes away, the survivor will become the sole owner of all the assets. However, if the survivor eventually requires geriatric care three years later, they may not qualify for the residential care subsidy, potentially putting a strain on their financial resources.

The Solution:

To mitigate the risks associated with geriatric care costs and ensure asset protection, Veronica and Maximus can consider the following steps:

By transferring the house into their names as tenants in common in equal shares, they create an opportunity to protect their assets. They then form a trust which owns no assets, and prepare new wills that leave all of their assets to the trust. Upon the passing of either Veronica or Maximus, their respective half of the house will be owned by the trust, providing a shield against geriatric care costs. As of July 1, 2023, a portion of the other half share of the house, amounting to \$273,628, will be exempt from geriatric care means testing, further solidifying their financial security.

With trust		Without trust
\$500,000.00	House \$500,000.00	\$500,000.00
\$250,000.00 will of deceased = to Trust	Wealth of survivor after death of 1 partner	\$500,000.00 House passes to survivor
	Exemptions from geriatric care where 1 dead, the other in care:	
	\$273,628 plus CPI increases for 3 years	
	Total exemption:	\$273,628 plus CPI increases for 3 years
	Amount which must be paid for geriatric care costs before residential care subsidy	\$226,372 less CPI increases for 3 years plus any increase in value of the property

Statistics on Geriatric Care:

According to Statistics New Zealand in 2017/2018 31,600 individuals resided in residential care, highlighting the significance of proactive planning for later years.

Click this link for details of the residential care subsidy means testing rules <https://rossholmeslawyers.com/blog/geriatric-care-means-testing-rules> which impose income thresholds and asset thresholds. The asset thresholds are:

Asset Exemptions:	Single and couple both in care	Couple - one in care: Your house is exempt plus
1 July 2023	\$273,628	\$149,845
	plus consumers price index (CPI) increases on 1 July every year thereafter	plus consumers price index (CPI) increases on 1 July every year thereafter

Protecting your legacy:

The above real-life examples emphasize the importance of trust-based estate planning. By forming a trust, you can protect assets from future partners, creditors, and geriatric care means testing. This approach ensures that your assets remain secure, benefiting you during your lifetime and safeguarding your legacy for future generations. If you have a blended family our experienced team at Ross Holmes

Virtual Lawyers Limited can guide you through the process of tailoring a trust-based estate plan to meet the unique needs of your blended family.

Will challenges by partners and children can create discord and strife among loved ones, leading to emotional strain and financial turmoil. By proactively establishing a trust-based estate and asset protection plan, you can minimise the chances of such disputes and ensure that your intentions are carried out smoothly.

It's time to take control of your future. Our expert team will work closely with you to define clear goals and craft a comprehensive trust-based estate and asset protection plan tailored to your unique circumstances. As Brian Tracy once said, "*Goals are the fuel in the furnace of achievement.*" Let us guide you on the path to securing your legacy.

Remember, "*Obstacles are those frightful things you see when you take your eyes off your goal*" as Henry Ford famously noted. With our expertise and meticulous planning, we'll help you stay focussed and achieve peace of mind.

Creating a trust as part of a trust based estate and asset protection plan

Creating a trust as part of a trust-based estate and asset protection plan requires careful consideration and customization to meet your specific needs. To ensure a successful plan, follow these steps:

Step 1: Seek expert guidance

Consult with an experienced expert who specialises in trusts and estate planning (such as Ross Holmes Virtual Lawyers Limited). They will provide valuable insights, guide you through the process, and ensure that your trust-based estate and asset protection plan meets your objectives.

Step 2: Define Your Objectives

Start by identifying and recording your objectives for the trust. This will help you plan effectively for both best and worst-case scenarios. By completing our detailed questionnaire you can gather all the necessary information for your planning process.

Step 3: Select Trustees

Choose your trustees wisely. Trustees play a crucial role in managing and administering the trust. Select individuals who are trustworthy, competent, and aligned with your objectives. Avoid appointing rubber stamp trustees who merely go along with decisions without active participation. All trustees must act honestly and in good faith, as established in legal cases such as *Dundee General Hospitals Board of Management v Walker and Another* [1952] 1 All ER 896. To ensure valid decisions, all trustees must be involved in the decision-making process, as demonstrated in *Turner & ors v Turner & ors* [1983] 2 All ER 745.

Consider establishing your own private trustee company as the sole trustee. Under section 14 of the Trusts Act 2019, only one trustee is legally required. By using a private company as the trustee, you can minimise ongoing costs. The directors of the trustee company, including an "independent" director if necessary (provided they are genuinely involved in all decisions), would typically be the people who would otherwise act as trustees. As the shareholders of the company, you have the ability to hire and fire directors without incurring additional costs. This structure also simplifies the process if a trustee passes away or becomes mentally incapacitated.

Step 4: Choose the Right Trust Structure

Determine the appropriate trust structure based on your specific circumstances and objectives. There are various options available, including family trusts, parallel trusts, defined interest trusts, multi-generational trusts, business trusts, inheritance trusts, special disability trusts, and a company owned by a trust, Click here <https://rossholmeslawyers.com/types-of-trusts> for more details. Our experienced team can assist you to understand the implications and benefits of each option.

Step 5: Draft the trust deed

We work with you to prepare a tailor made trust deed tailored that reflects your objectives, and which complies with the provisions of the Trusts Act 2019 [link]. Click here for information on the major provisions that will be included: <https://rossholmeslawyers.com/reviewing-your-trust> .

Step 6: Transfer assets to the trust

Your assets that are anticipated to appreciate in value are sold to the trust at their current market value, unless there are taxation reasons that make this undesirable or if you plan to sell an asset in the near future. In return for the transferred assets, you receive an IOU back from the trust in the form of a Deed of Loan. Any subsequent increase in the value of the assets belongs to the trust.

You then gift the IOU to the Trust, either in a single lump sum or over a number of years. For residential care subsidy means testing purposes gifts exceeding \$27,000 per individual or per couple annually will be considered to be your assets.

The assets remain within its ownership until it becomes appropriate for the beneficiaries to inherit them. Through a well-designed trust-based estate and asset protection plan, assets can be transferred from the trust to the beneficiaries' trusts, or if there is only one child, the trust can be "inherited" by that child. As these assets never belonged to the beneficiaries, they are protected from being claimed by others.

Step 7: Creating a new will

Creating a new will that leaves your assets to the trust is a straightforward, secure, and sensible approach. This will complete any outstanding gifting and ensure that all assets still owned by you are placed within the trust, providing comprehensive protection.

Once all your assets have been gifted to the Trust, the absence of any personal

assets prevents challenges to your will upon your death.

Step 8: Regular review and updates

Regularly review and update your trust-based estate plan as circumstances change. Life events such as births, deaths, marriages, divorces, or significant changes in financial situations may require adjustments to the trust. Stay proactive and work closely with us to ensure the trust remains aligned with your current objectives.

Step 9: The result

A trust-based estate and asset protection plan works because of two fundamental principles:

- 1 The current value of your assets is determined at today's market values, while any future increases in value become the property of the trust.
- 2 By including a provision in your will that leaves your assets to the trust, you ensure that the trust accumulates wealth upon your demise.

Operating the trust

Operation of the Trust is easy

With our unique detailed running instructions the trust will work much the same as you presently do. If anything, it is less complicated.

Your personal bank account will still be used for your personal income and personal spending. You own depreciating assets (furniture & cars)

The Trust normally owns appreciating assets. The Trust's bank account is for trust investments, trust income & payments to beneficiaries.

You live in the Trust's house. You normally pay rates, insurance, maintenance and interest. The Trust pays the principal mortgage repayments. You lend the Trust the money to pay the principal loan repayments.

We prepare detailed running instructions to enable trustees to easily operate the trust. We can assist you to administer the trust as required.

The costs involved

In the case of Ross Holmes Trusts the investment in the will based estate plan or the trust based estate and asset protection plan is usually a one off cost.

Our trust based estate and asset protection plan includes practical running instructions. The on-going running costs will not be great, as the trustees can take care of the administration themselves. The security and future safety achieved through your trust based estate and asset protection plan makes any upfront costs very worthwhile.

Our promises

- The trusts we form are no more difficult to run than your own affairs.
- We are here to support you as required if you need advice.
- There are no ongoing fees unless you consult us, and you are not tied to us.

Contact us

We would like to offer you a 15 minute, free, no obligation session for new clients to discuss your individual situation. Please call us now on + 09 415 0099 extension 0 for a free no obligation 15 minute appointment.

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We look forward to hearing from you!