

## TRUSTS AND RELATIONSHIP PROPERTY

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It is common for people to establish Trusts to protect property from becoming relationship property in subsequent relationships, following a separation. Trust property sits outside the relationship pool. In this day and age when people often have more than one partner in their lifetime it is a sensible mechanism for keeping assets immune from claim by subsequent partners.

The law is that property acquired as a beneficiary under a Trust settled by someone else is not relationship property, unless the beneficiary consents to that property (or its proceeds) becoming so intermingled with relationship property that it is no longer practical or reasonable to treat it as separate property. On that understanding many people establish Trusts confident that the Trust assets will not be part of a relationship property pool for division.

A recent case heard in the Family Court considered this point and the application of the Act to Trust property in certain circumstances.

Mr and Mrs Q were married in 1979 and a couple of years later Mrs Q's father established a Trust and appointed Mrs Q as a Trustee and, a discretionary and a final beneficiary of the Trust. The family farmland was the main Trust asset. Over the next 22 years Mr and Mrs Q farmed the land. Mr Q understandably wanted to share in this valuable asset following his separation from Mrs Q.

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Among other issues the Court was asked to consider whether Mr Q had a claim to an interest in the Trust property under the Property (Relationships) Act 1976.

The question was whether Mrs Q's rights and interests as a beneficiary of the Trust were her separate property or relationship property under the Act. If so, was Mr Q entitled to any share of it and if so, how much. If not, whether he was entitled to some compensation for his efforts on the farm over the 22 years.

Mrs Q's status as a Trustee and a discretionary beneficiary did not give her an interest in the Trust property. Discretionary beneficiaries have an expectation only that the Trustees will advance them a benefit from time to time.

Judge Fitzgerald found that Mrs Q's interest as a final beneficiary amounted to an interest in the Trust property. That interest was contingent on her living until the Trust was wound up and there still being Trust property in existence at that time, but it was still an interest.

He went on to determine that Mrs Q's interest was her separate property as it was acquired as a beneficiary under a Trust. However, His Honour then went on to consider Section 9A of the Act which says that increases in value of separate property, attributable to contributions of relationship property or the actions of the non-owner partner, are relationship property.

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In the Q's case, Mr Q's contributions had contributed to the increase in the value of the Trust property (from about \$150,000.00 at the date of their marriage to almost \$4,000,000.00 at the time of separation) and that he was therefore entitled to a one-half share of that increase in value.

This case was decided the way it was because Mrs Q is a final beneficiary in the Trust. Had she been merely a discretionary beneficiary, Mr Q would not have achieved the result he did under the Property (Relationships) Act 1976. Trusts need to be set up so that this fast developing area of law is considered when drafting Trust deed provisions by a specialist in this area. Otherwise, the protection you thought you may be gaining will be illusory.