

Setting up a Charitable Trust

Setting up a charitable trust is a way you can leave a lasting legacy to a cause that means something to you - and it can last forever so that your generosity continues to benefit others long after you have gone.

Charitable trusts are normally formed to undertake charitable activities and are less suitable for commercial activities. A charitable trust may make profits on their trading activities but the profits must be used for their charitable purposes and cannot be distributed to members.

A trust can operate in almost exactly the same way as an individual person can. A trust can hold property, raise mortgages, hold bank accounts and generally hold all types of assets and investments as long as it operates according to the powers set out in the trust deed.

There are many sources of information on the web to guide you through the process of setting up a charitable trust. Here we provide a basic outline, based on materials from NZ Companies office (www.societies.govt.nz), The Department of Internal Affairs & Ministry of Social Development (www.community.net.nz), New Zealand Federation of Voluntary Welfare Organisations and the Office for the Community and Voluntary Sector (www.keepingitlegal.net.nz)

When setting up a charitable trust there are two options:

Registered charitable trust (trust-based) — in this model, two or more trustees can set up a trust for a charitable purpose. This is useful where the initial trustees want to retain control of the organisation, including appointing further trustees.

Registered charitable trust (society-based) — in this model, an established society (here meaning members of an unincorporated association), or a minimum of five people, can register a society as a charitable trust board under the Charitable Trusts Act 1957 as long as it meets the requirements of being charitable.

Registering a trust or society as a charitable trust board under the Charitable Trusts Act 1957 is started by applying to the Registrar of Incorporated Societies at the Companies Office.

Charitable purposes

Trusts or societies registered as charitable trust boards must act exclusively or principally for charitable purposes which are:

1. the advancement of education
2. the advancement of religion
3. the relief of poverty, sickness or disability
4. any other purpose that benefits the community.

A charitable organisation with a purpose falling under (4) must also be able to demonstrate "public benefit". This means the organisation must show that its purposes can produce a benefit that is recognised by law as beneficial, and that this benefit is available to the public or a sufficient section of the public.

Key features

A charitable trust board:

- is set up under the Charitable Trusts Act 1957
- has a board of at least two trustees (if it's a trust) or five members (if it's a society) to make decisions
- must have charitable aims — not be for private profit
- will have a trust deed (if it's a trust) or set of rules or constitution (if it's a society) under which it operates
- a copy of these must be lodged with the Registrar of Incorporated Societies at the time of applying for registration
- once registered and incorporated, has a separate legal identity distinct from its members or trustees

It is not compulsory to incorporate as a board. There are, however, advantages to becoming incorporated. If the trustees apply to incorporate as a board, they need not be concerned about retirements and appointments over time, as the board will hold the trust property in its name and the trustees – now members of the board – will decide how the board should administer it to benefit the charitable purpose.

The board, not the trustees, will enter into all obligations, and it, not the trustees, will be sued if some default occurs. The trustees will continue to act to the high standards that the law requires whether or not they decide to incorporate as a board.

You make application to incorporate a trust under the Charitable Trusts Act 1957 by sending a number of documents to the Registrar of Incorporated Societies.

- an application for registration
- a statutory declaration
- your trust deed

There are examples and good templates for preparing a trust deed on the websites previously mentioned.

The address you should send your documents to is:

**Registrar of Incorporated Societies
Ministry of Economic Development
National Processing Centre
Private Bag 92061
Victoria Street West
Auckland 1142**

The application will be considered by the Companies office and if there are any irregularities they will contact you to discuss them.

Once your organisation is recognised as a Charitable Trust, register with the Charities Commission.

This can be done online at <http://www.charities.govt.nz/>, or the papers can be downloaded from here, completed by hand and sent in via postal mail.

As a registered charitable entity, your organisation can expect to be eligible for tax exempt status.

Changes to the Income Tax Act 2004 and Estate and Gift Duties Act 1968 mean that only charities registered with the Charities Commission will be eligible for tax exempt status.

Tax exempt status means registered charities don't have to pay income tax and resident withholding tax, and donors of gifts to registered charities don't have to pay gift duty.



**COMMUNITY
WAIKATO**

"Supporting strong communities"

Hei tautoko kia tuu pakari ai ngaa haapori

33 Victoria Street, P O Box 1367, Hamilton 3240.
Phone: 07 838 1583 Fax: 07 957 1981
www.communitywaikato.org.nz