

PRESENTER



Aimee Mitchell, TGT Legal, Auckland

Aimee is a partner at TGT Legal where she specialises in trusts and wealth and succession planning for families and entrepreneurs. She has extensive experience of advising individuals, families, family offices and trustee companies on the establishment, restructure, management and administration of trusts and other family wealth structures. Aimee recently returned to New Zealand having spent the last 10 years practising as a trusts and private client lawyer in the United Kingdom and Channel Islands, most recently as a partner of a leading London private client firm. She is dual qualified in New Zealand and England and Wales and is also qualified as a Chartered Tax Adviser (UK).

Acknowledgement

This webinar is sourced from a session delivered at the NZLS CLE Ltd, Winding Up a Trust (30 November 2021).

The statements and conclusions contained in this book are those of the author(s) only and not those of the New Zealand Law Society. This book has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

1. WINDING UP A TRUST.....	1
REASONS TO WIND UP	1
<i>Compliance costs</i>	1
<i>Trusts Act 2019 (TA 2019)</i>	3
<i>Residential care subsidies</i>	4
<i>Objectives have been achieved</i>	5
<i>Beneficiary circumstances have changed</i>	5
2. HOW CAN THE TRUST BE WOUND UP?	7
VESTING UNDER THE TERMS OF THE TRUST.....	7
POWERS OF REVOCATION	9
WINDING UP BY THE TRUSTEES	9
WINDING UP BY THE COURT	10
WINDING UP BY THE BENEFICIARIES	11
3. PRACTICAL ISSUES AND CONSIDERATIONS.....	15
WHAT ARE THE TRUSTEES DISTRIBUTING?	15
WHO ARE THE TRUSTEES TRANSFERRING THE TRUST FUND TO?.....	15
<i>Relationship property issues</i>	15
<i>Conflicts of interest – trustee/beneficiaries</i>	16
<i>Overseas beneficiaries</i>	16
<i>Other trusts</i>	17
PROTECTING THE TRUSTEES	17
<i>Contractual indemnities</i>	18
<i>Known and unknown claims affecting the trust property</i>	19
<i>Applications for directions</i>	20
TAX ISSUES	21
RECORDING THE WIND UP	22
4. SCHEDULE 1 – EXAMPLE INDEMNITIES	23
EXAMPLE ONE – INDEMNITY ON WIND UP – DISTRIBUTION OF ENTIRE TRUST FUND TO ONE BENEFICIARY	23
EXAMPLE TWO	23
5. SCHEDULE 2 – WIND UP CHECKLIST	25