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Ultimate Guide for

TRUST DEED UPGRADE

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FACTS ABOUT TRUSTS

Trusts are a fundamental element in the planning of business, investment and family financial affairs. Although trusts are commonplace, they are frequently misunderstood.

A frequently held, but erroneous view, is that a trust is a legal entity or person, like a company or an individual.

A trust is **not a separate legal entity or person** at all – it is essentially a **relationship** that is recognised and enforced by the courts in the context of their “equitable” jurisdiction.

Not all countries recognise the concept of a trust, which is an English invention, first developed in the 12th century by the Courts of Chancery under the King of England. The law of trusts was constructed as part of "equity", a body of principles made by the Courts of Chancery, which sought to correct the strictness of the common law.

The trust was an addition to the law of property, in the situation where one person held legal title to property, but the courts decided it was fair, just or "equitable" that this person be compelled to use it for the benefit of another.

FACTS ABOUT TRUSTS

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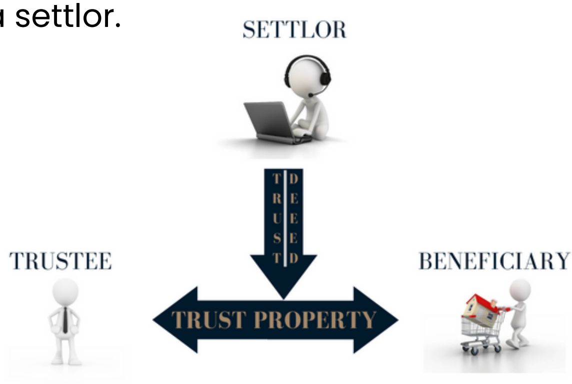
This recognised **a split between legal and beneficial ownership**: the legal owner was referred to as a "**trustee**" (because he was "entrusted" with property) and the beneficial owner was the "**beneficiary**".

Trusts are established for a variety of purposes including **privacy**, **estate planning**, **tax planning**, **pension funds**, **charities**, **investment trusts**, and **asset protection**. Although trusts are prolific, due to the privacy afforded to trusts, the exact number of trusts is unknown. Australia, for example, has 25 million people, but well over 1 million trusts.

Summary:

A trust is defined as a **relationship** or a **fiduciary arrangement** that allows a third party (trustee) to hold investment assets separately on behalf of a person or business (beneficiary) through a Trust deed created by a settlor.



BENEFITS OF HAVING A TRUST

The **tax saving benefits** of Australian family trusts include:

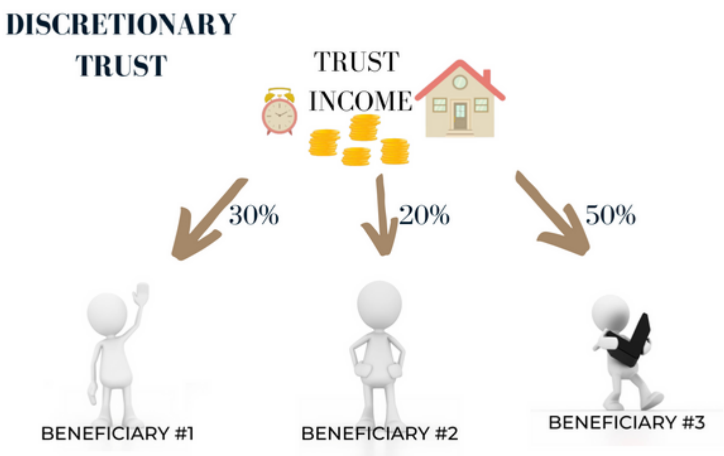
- **Flexibility on income distributions**. The trustee decides before the 30th June each financial year how that year's trust income is to be distributed between the various beneficiaries. Generally, income will be distributed to beneficiaries in lower tax brackets.

- **Ability to stream capital gains and franked dividends to specific beneficiaries**. For example, capital gains should be streamed to beneficiaries with carried forward capital losses.

- **Ideal structure for owning capital appreciating asset** (such as land and shares) as the **beneficiaries can access the 50% CGT discount on any realised capital gains** (if the assets were owned for more than 12 months).

- Allows for **succession planning** and the **transfer of wealth to future generations** without immediate tax consequences.

BENEFITS OF HAVING A TRUST



TYPES OF TRUSTS

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In general terms the following types of trusts are most frequently encountered in asset protection and investment contexts:

- Fixed trusts
- Unit trusts
- Discretionary trusts
- Bare trusts
- Hybrid trusts
- Testamentary trusts
- Charitable trusts
- Superannuation trusts

Fixed trusts

In essence these are trusts where the trustee does not have to exercise a discretion since each beneficiary is automatically entitled to his or her fixed share of the capital and income of the trust.

Unit trusts

These are generally fixed trusts where the beneficiaries and their respective interests are identified by their holding "units" much in the same way as shares are issued to shareholders of a company. The beneficiaries are usually called unitholders.

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Discretionary trusts

These are often called "family trusts" because they are usually associated with tax planning and asset protection of family members. In a discretionary trust the beneficiaries do not have any fixed interests in the trust income or its property but the trustee has a discretion to decide whether any of them is to be entitled to income or capital and, if so, to how much.

Bare trusts

Where there is only one trustee, one legally competent beneficiary and no specified obligations, the beneficiary has complete control of the trustee (or "nominee") and this is known as a bare trust. A common example of a bare trust is a nominee shareholding – where the shareowner holds shares on behalf of someone else who does not want to be identified.

Hybrid trusts

These are trusts which have both discretionary and fixed characteristics. The fixed entitlements to capital or income are dealt with via "special units" which the trustee has power to issue.

TYPES OF TRUSTS

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Testamentary trusts

As the name implies, these are trusts which only take effect upon the death of the testator. Normally, the terms of the trust are set out in the testator's will and are often established where the testator wishes to provide for their children who have yet to reach their adulthood or are handicapped.

Charitable trusts

These Trusts provide a vehicle for the establishment of philanthropic Trusts that are allowed concessional taxation treatment and deductions to taxpayers for gifts to such Trusts.

Superannuation trusts

All superannuation funds in Australia operate as trusts. The deed establishes the basis of calculating each member's entitlement, and sometimes the contributions that have to be made for a member, while the trustee will usually retain discretion concerning such matters as the fund's investments and the selection of a death benefit beneficiary.

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Common reasons for getting a Discretionary Trust

Asset Protection

Wealth Accumulation

Tax Minimisation

We always set up a Discretionary Trust for a specific purpose.
It can be for asset protection, tax minimisation, or family wealth accumulation.

So it is **important to have a modern up-to-date Discretionary Trust Deed**, just like how mobile phones need updates for it to be better than the last version.

WHY IS THERE A NEED TO UPGRADE THE DISCRETIONARY TRUST?

Here are **five reasons** to update your discretionary trust deed:

- **Get a line of Appointors**: The Appointor is the real boss behind the trust and without a line of succession, at least two and better still 3 generations long, problems may arise if the trust is left without an appointor.

- **Improved Asset Protection**: It is important to ensure that there is a corporate trustee (otherwise the trustees are exposed personally to any litigation) and that the directors of the corporate trustee have successor directors in place in the event that they become sick, disabled, die or are litigated against. The director may resign from their role and a close family member or associate can take their place to ensure continuity of business.

- **Quarantining for bloodline only**: The trust you have is likely not built for the protection of bloodline beneficiaries. Upgrading the trust deed **allows for additional security** ensuring your future children's de facto partners cannot access assets in the trust in the event of separation.

WHY IS THERE A NEED TO UPGRADE THE DISCRETIONARY TRUST?

Here are five reasons to update your discretionary trust deed:

- **Ease of Use and Administration**: Each year the Trustee must prepare detailed trust distribution minutes detailing how income from the Trust is to be distributed amongst beneficiaries. **Failure to distribute** all income properly means that **there will be 45% tax to pay**. With a **modern deed** tied into corresponding trust distribution minutes the task is more effective, quicker and less prone to costly tax penalties.

- **Big changes happening**: Each State has put in place a 2% land tax surcharge on property held in a discretionary trust that does not specifically exclude foreign person beneficiaries. Our modern discretionary trust deed upgrade does and also ensures that the accounting standards changes which require expensive "financial accounts" do not apply. Both of these recent measures in the last year can prove extra costly.

OUR EXCLUSIVE OFFER

Given all of the information you have read about trusts and our desire to ensure that our clients have the best family succession, asset protection, and trust estate planning structure and strategies in place, we highly recommend that we, through our partnership with Abbott & Mourly Lawyers, **prepare a deed upgrade for you**.

We have your old deed and simply need to know your line of succession of appointors and we will do the rest.

If **you do not act to upgrade and litigation ensues** based on the provisions or failures of an older deed, **we note that we have done our best to advise you** of the importance of having a modern and up to date deed.

Click here to proceed with our deed upgrade offer for only **$550**.

Click HERE to Proceed

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