



REPLACEMENT DISCRETIONARY TRUST DEED ORDER FORM

NAME:
FIRM:
PHONE:
E-MAIL:

FREECALL 1800 773 477

IMPORTANT: PLEASE REFER TO THE ATTACHED PAGES FOR CRITICAL INFORMATION REGARDING REPLACEMENT TRUST DEEDS

NAME OF TRUST _____

DATE OF TRUST _____ (this must be the *ORIGINAL* date of the original trust deed)

Settlor: _____

Original Settlement Sum: _____

Jurisdiction on establishment (please circle) QLD NSW ACT VIC TAS SA WA NT

ORIGINAL TRUSTEE/S

Full Name/s _____
(include ACN if company)

ORIGINAL PRINCIPAL/S & BENEFICIARIES

Principal/s of Trust* _____

Alternative Principal/s (if any)* _____

* Party/s who will have the power to appoint and/or remove a Trustee/Beneficiary

PRIMARY BENEFICIARIES (Please provide full names)

#1 _____ #4 _____
#2 _____ #5 _____
#3 _____ #6 _____

SECONDARY BENEFICIARIES (Please provide full names)

#1 _____ #3 _____
#2 _____ #4 _____
AND Relatives of Primary Beneficiaries are included (i.e. spouses, parents, brothers, sisters, all children, grandchildren, nieces and nephews).

TERTIARY BENEFICIARIES (Please provide full names)

#1 _____ #3 _____
#2 _____ #4 _____
AND All companies and trusts in which any of the previous beneficiaries are interested are included, as are religious or charitable institutions.

DEFAULT BENEFICIARIES (Please provide full names)

#1 _____ #4 _____
#2 _____ #5 _____
#3 _____ #6 _____

CONTINUED OVER

CURRENT TRUSTEE/S

Full Name/s _____
(include ACN if company)

Address of Trustee/s _____

Directors Name/s _____
(if company)

CURRENT PRINCIPAL/S & BENEFICIARIES

Principal/s of Trust* _____

Alternative Principal/s (if any)* _____

* Party/s who will have the power to appoint and/or remove a Trustee/Beneficiary

PRIMARY BENEFICIARIES (Please provide full names)

#1 _____ #4 _____
#2 _____ #5 _____
#3 _____ #6 _____

SECONDARY BENEFICIARIES (Please provide full names)

#1 _____ #3 _____
#2 _____ #4 _____

AND Relatives of Primary Beneficiaries are included (i.e. spouses, parents, brothers, sisters, all children, grandchildren, nieces and nephews).

TERTIARY BENEFICIARIES (Please provide full names)

#1 _____ #3 _____
#2 _____ #4 _____

AND All companies and trusts in which any of the previous beneficiaries are interested are included, as are religious or charitable institutions.

DEFAULT BENEFICIARIES (Please provide full names)

#1 _____ #4 _____
#2 _____ #5 _____
#3 _____ #6 _____

ADDITIONAL INFORMATION

PAYMENT DETAILS: Please debit the following card details by the amount of **\$ 330.00**

TYPE OF CARD: Visa Mastercard *Diners Club *Amex * 3% surcharge applies.

CARD NUMBER: _____ EXPIRY DATE: (/)

NAME ON CARD: _____ SIGNATURE: _____

Please return this Form on FREEFAX 1800 655 556 or call with any queries.

IMPORTANT: PLEASE READ PRIOR TO COMPLETING THE ORDER FORM

RESETTLEMENT RISKS - REPLACEMENT TRUST DEEDS

We strongly recommend that you seek independent legal advice in relation to the potential resettlement of the trust and satisfy yourself in relation to the issues below.

The existence of the trust generally cannot be established, or the trust administered, without a trust deed. Therefore, lost trust deeds present particular difficulties when it comes to proving the trust. The existence, and proper running, of the trust require lost deeds to somehow be replaced. In practice, this may be done by:

- (a) Adopting a replacement trust deed; or
- (b) Seeking a declaration from a court of the terms of the trust.

In either case, the trustee must establish the terms of the trust as they existed at the date of settlement. It is strongly recommended that the trustee contact the person responsible for the preparation of the original and obtain details of the original instructions and copies of the form of trust deed generally in use at the time. Together with such evidence of the terms of the trust as the trustee possesses, the trustee must then establish, as closely as is possible, the terms of the trust as they existed at its creation.

Whether or not ACIS prepared the original trust deed, we cannot verify the terms of the original and as such the form supplied by ACIS will be a form used by ACIS at or about the time of the original trust deed. It may not, therefore, represent an accurate version of the original trust deed.

It is possible that the ATO, stamp duty authorities or a court will find that the preparation of a replacement trust deed, and reliance on it by a trustee, constitutes a resettlement of the original trust. Generally, to do so, the relevant body must show that the replacement trust deed differs from the original to such an extent, that it redefines the trust relationship and gives rise to a new trust.

The onus is on the trustee rather than the ATO, stamp duty authorities or a court to establish that it is not a resettlement. Depending on what other evidence may be available, the terms of a replacement trust deed may be argued to differ from the original simply because it cannot be shown that they are identical, or that terms and conditions in the replacement trust deed were not in common use at the date of the original deed. As such, the trustee should be in a position to produce evidence of the original terms contained in the original trust deed. In each case, the outcome will depend on the unique circumstances of the particular trust.

In order to determine whether the replacement will trigger a resettlement of the Trust it would be necessary to obtain a private ruling from the ATO and a determination from the stamping authorities to put the issue beyond doubt. This ideally should be done before the replacement is adopted.

You should also note that the stamp duty authority in your State may request further details to confirm any claim for an exemption from duty including:

- (a) full details of the Trust's assets and their value;
- (b) evidence of stamping at the time of acquisition of those assets; and
- (c) whether any trust assets have been distributed to beneficiaries.

IMPORTANT NOTE: if the trust deed or a copy of it is subsequently located after the execution of a replacement trust deed, the original trust deed must be used as the correct trust deed to the exclusion of the replacement.

WARNING – SIGNING THE REPLACEMENT TRUST DEED

The land titles authorities in some states require the replacement trust deed to bear an original signature of both the Settlor and the Trustee where a dealing with land involving the trust is required to be registered. We recommend against doing so due to the possible resettlement risks in doing so. However, should the trust be dealing with land, you should obtain legal advice regarding these issues **BEFORE** signing the documents.

According to Deacons Graham & James, Lawyers in *“The A – Z of Trusts”* (an authority on this issue), “If a trust deed has been lost, one option is to prepare a replacement or confirmatory trust deed.” This is indeed what the replacement produced by us purports to be.

The authors go on to state “The creation of a replacement or confirmatory trust deed may, however, constitute a new declaration of trust for stamp duty and capital gains tax purposes.....[and] might still constitute a resettlement of trust with similar stamp duty and capital gains tax consequences.”

“The best way to deal with a lost trust deed is to have a person connected with the trust...make a statutory declaration reaffirming the terms and existence of the trust.”

The authors suggest that ideally this should not be done by the trustee since doing so may still amount to a resettlement but that “a statutory declaration should not constitute an instrument which is dutiable...”

The Office of State Revenue has accepted the concept of providing replacement trust deeds which is evidenced by the fact that they usually impose no duty on the deeds since they usually accept that no change in beneficial ownership occurs on the execution of the statutory declaration forming part of the replacement – ie that this is merely a restatement of an existing trust and not a new trust. However, they have the discretion to assess the replacement to duty if circumstances require.

For these reasons, we suggest not having the replacement trust deed executed by the trustee but that the trust deed takes the form of a statutory declaration with its (unsigned) terms annexed only. We are concerned that having the terms of the annexed trust deed re-executed would potentially cause resettlement problems.