

Lost Discretionary Trust Deed Replacement Order Form

Name	<input type="text"/>	Phone	<input type="text"/>
Firm	<input type="text"/>	E-mail	<input type="text"/>

IMPORTANT: Please refer to page 3 and 4 for critical information regarding replacement trust deeds.

Trust Details

Trust Name	<input type="text"/>							
Establishment Date	<input type="text"/>	Last Amendment Date	<input type="text"/>					
Settlor	<input type="text"/>							
Original Settlement Sum	<input type="text"/>							
Meeting Address	<input type="text"/>							
Jurisdiction on establishment (Please select):	<input type="checkbox"/> Qld	<input type="checkbox"/> NSW	<input type="checkbox"/> ACT	<input type="checkbox"/> Vic	<input type="checkbox"/> Tas	<input type="checkbox"/> SA	<input type="checkbox"/> WA	<input type="checkbox"/> NT

Please submit a copy of any documents that have amended the trust deed together with this order form.

Original Trustees

IMPORTANT: Full, verifiable names are required.

Corporate Trustee (if applicable)	<input type="text"/>
ACN	<input type="text"/>
Individual Trustees	<input type="text"/>
	<input type="text"/>

Original Appointor/s & Beneficiaries

Appointors	<input type="text"/>
	Appointors have the power to appoint and/or remove a Trustee or Beneficiary.
Alternative Appointors (if any)	<input type="text"/>
	Alternative Appointors have no power other than to fill the position of Appointor should it be vacated.
Primary Beneficiaries	<input type="text"/>
	<input type="text"/>
Secondary Beneficiaries	Relatives of Primary Beneficiaries are included (i.e. spouses, parents, brothers, sisters, all children, grandchildren, nieces and nephews).
Tertiary Beneficiaries	All companies and trusts in which any of the previous beneficiaries are interested are included, as are religious or charitable institutions.
Default Beneficiaries	<input type="text"/>
	<input type="text"/>

Actions to take before proceeding with the replacement trust deed

The trustee should contact the person responsible for the preparation of the original trust deed, obtain details of the original instructions, and copies of the form of trust deed used by them, 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.

If this cannot be done, we cannot verify the terms of the original trust deed and, as such, we will supply a version of the Acis standard deed which was in use at the time, which is as close as possible to the time of the original trust deed. It may not, therefore, represent an accurate version of the original trust deed.

Please return this completed form to acis@acis.net.au, Freefax 1800 655 556 or Locked Bag 1, Fortitude Valley Q 4006

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Current Trustees

IMPORTANT: Full, verifiable names are required.

Corporate Trustee
(if applicable)

ACN

Officer Names
and Roles

(First Officer listed to be
Chairman, first 2 Officers
to be signatories)

<input type="text"/>
<input type="text"/>
<input type="text"/>
<input type="text"/>

Director Secretary

Director Secretary

Director Secretary

Director Secretary

Individual Trustees
(First person listed to be
Chairman)

<input type="text"/>
<input type="text"/>

Current Appointors & Beneficiaries

Appointors

Appointors have the power to appoint and/or remove a Trustee or Beneficiary.

Alternative Appointors
(if any)

Alternative Appointors have no power other than to fill the position of Appointorw should it be vacated.

Primary Beneficiaries

<input type="text"/>
<input type="text"/>
<input type="text"/>

Secondary
Beneficiaries

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

Tertiary
Beneficiaries

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

Default Beneficiaries

<input type="text"/>
<input type="text"/>
<input type="text"/>

Additional Information/Special Instructions

<input type="text"/>

Payment Details

Please debit the following card details by the amount of \$

Type of Card

Visa Mastercard Diners Club* Amex* *3% SURCHARGE APPLIES

Card Number

Expires

CCV

Name on Card

Signature

Please return this completed form to acis@acis.net.au, Freefax 1800 655 556 or Locked Bag 1, Fortitude Valley Q 4006

IMPORTANT: Please read the information below 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 a trust generally cannot be established, or the trust administered, without a trust deed and the absence of a trust deed presents particular difficulties when it comes to proving the trust. The existence, and proper running, of the trust require trust deeds to somehow be adopted or replaced. In practice, where it can be conclusively established that the trust has been validly established, this may be done by:

- (a) adopting a replacement trust deed; and
- (b) seeking a declaration from a court of the validity of the terms of the trust.

We recommend that once a replacement trust deed is supplied to you, that you take steps to obtain a court declaration in respect of its validity.

In any case, the trustee must establish that the trust was validly established and prove the terms of the trust as they existed at the date of establishment. It is essential that the trustee contact the person responsible for the preparation of the trust and obtain details of the original instructions and a copy of the trust deed. In the absence of the latter, the trustee must obtain a copy of the form of trust deed generally in use at the time by the person who prepared it. Together with such evidence of the existence and 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 established the trust or prepared the original trust deed, we cannot verify the existence of the trust or the terms of the original. As such the form supplied by Acis is a form used by Acis at or about the time of the date of the original trust deed as supplied by you. It may not, therefore, represent an accurate version of the original trust deed.

The ATO, stamp duty authorities or a court may find that the preparation of a replacement trust deed, and reliance on it by a trustee, in circumstances where the trust cannot be shown to have been validly established or where the terms of the trust alleged cannot be conclusively determined, constitutes a new declaration of trust or the resettlement of the original trust. Generally, to do so, the relevant body must show that the trust was not properly established or that the trust deed differs from the original to such an extent, that it redefines the trust relationship and gives rise to a new trust.

Such a finding will attract CGT (event E1 and/or E2) and/or stamp duty liabilities. Those liabilities may be considerable depending on the trust's assets. Such a finding may also result in the loss of carry forward losses in the trust (if any). The onus is on the trustee rather than the ATO, stamp duty authorities or a court to establish that it is not a resettlement or a new trust.

Where the trustee can conclusively show that the trust was properly established, 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 must be in a position to produce evidence of:

- (a) the valid creation of a trust; and
- (b) the original terms of the trust as contained in the original trust deed.
- (c) the original terms of the trust as 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 trust deed will constitute a new trust or trigger a resettlement of an existing 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 Replacement Trust Deed

The land titles authorities in some states require the replacement trust deed (as distinct from the Deed of Confirmation) 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. Similarly, some banks and other institutions may require this. We recommend against doing so due to the resettlement risks referred to below. However, should the trust be dealing with land, or a bank or other institution require a signature, 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 Office of State Revenue has also 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 – i.e. 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 (as distinct from the Deed of Confirmation) executed by the trustee. We are concerned that having the terms of the annexed trust deed re-executed would potentially cause resettlement problems.