

## Family (Discretionary) Trust – Instruction Sheet

We will prepare a standard discretionary trust deed and email the documents to you to arrange execution. Additional charges will apply if you wish for us to provide you with a hard copy of the documents.

In order for us to prepare an appropriate discretionary trust deed for you, please provide us with the information requested below.

### **1. Your full details**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_ **Email:** \_\_\_\_\_

### **2. Name of Trust**

\_\_\_\_\_

### **3. Settlor (Refer to Note 1)**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

### **4. Settled Sum. (Refer to note 1)**

\$10 \_\_\_\_\_

### **5. Trustee(s) – Individual(s) or Corporate**

Please tick the appropriate box

- Individual(s) (please go to Question 6)
- Corporate (please go to Question 7)

### **6. Individual Trustee(s) (complete this section and then go to Question 8)**

**Full Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**7. Corporate Trustee** (Advise us if you wish to establish this company)

**Name of Company:** \_\_\_\_\_  
**ACN:** \_\_\_\_\_  
**Director(s) name & address:** \_\_\_\_\_  
\_\_\_\_\_  
**Secretary:** \_\_\_\_\_  
**Registered Office:** \_\_\_\_\_  
\_\_\_\_\_

**8. Specified Beneficiaries** (Refer to Note 3)

**Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_

**9. Additional Class of General Beneficiaries** (If any) (Refer to Note 4)

**Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_

**10. Excluded Beneficiaries** (if any) (Refer to Note 5)

**Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_

**11. Appointor** (Refer to Note 2)

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**12. Substitute Appointor** (Refer to Note 2)

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

There is no requirement to have discretionary trust deeds endorsed or stamped under the *Duties Act 2008* (WA) which applies from 1 July 2008.

**NOTES**

1. The Settlor is the person who "sets up the trust". The Settlor does this by providing to the Trustee the sum of \$10.00 by cheque or cash (or such other amount as deemed fit) and signing the trust deed which shows that the \$10.00 is now held by the Trustee on the terms of the trust. The Settlor **cannot** be a beneficiary under the trust and is often, but not necessarily, the solicitor or accountant involved in the matter. The Settlor should be a person who will not have any future dealings with the trustee in its capacity as trustee of the trust. Adverse income tax consequences will arise if the Settlor is the parent of a beneficiary under 18 years of age.
2. The Appointor has the following powers:
  - (a) the Appointor may remove the Trustee from office and appoint another person or himself as new trustee or additional trustee;
  - (b) the Appointor may give written directions to the Trustee as to the general policy to be followed by the Trustee in the investment of trust funds;
  - (c) any termination of the trust requires the Appointor's approval.

Any amendment to the trust deed by the Trustee can only be made with the approval of the Appointor.

The Appointor may nominate an Appointor to replace himself or herself either by deed or in his or her Will or by notice to the Trustee. The Appointor by default will become the Appointor in the event that the original Appointor dies and fails to nominate an Appointor in his place by either of the aforementioned methods.

3. Specified beneficiaries are the reference point for describing the beneficiaries of the

trust. Once Specified Beneficiaries are named or described the Trustee can act for the benefit of (and distribute income to) those persons as well as their parents, grandparents, uncles, aunts, brothers, sisters, spouses, widows, widowers, children and grandchildren, parents and grandparents of any spouse, uncle or aunt. The Trustee can also act for the benefit of and distribute to any trusts that any of the above persons have an interest in or any company in which any of the above people hold shares as well as any charity or relative the Trustee may nominate.

We do not encourage the setting up of a new trust by describing the Specified Beneficiaries as "the children of A and/or B" which seems to be a fairly common practice of those instructing solicitors to establish deeds. Problems can arise if in fact there are no such children at the commencement of the trust because this will mean that there are no beneficiaries at all. Hence at least one person or entity named as a Specified Beneficiary must be alive or in existence at the commencement of the trust.

4. If it is desired that the trust also distribute to people not included by virtue of the provisions noted in note 3 above, then he she or it should be nominated in Item 7 of the Instruction Form.
5. If it is desired that anybody within any of the classes referred to in note 3 above should be specifically excluded from the trust then he, she or it should be listed in Item 9 of the Instruction Form as an Excluded Beneficiary.

Please check this form and ensure that all information is complete before returning it. In particular please ensure that full legal names and ACN's are provided and that addresses are completed.

***These notes are for client information purposes only and do not constitute legal advice. Legal advice may be obtained from Perth Probate and may be the subject of separate charges.***