

# How do I transfer control of my family trust?

Estate Planning Client Guide

## If you hold assets in a family trust, have you thought about what will happen to the trust in the event of your death?

Depending on the terms of the trust deed, your family trust can continue well beyond your death. Although the trust assets will not form part of your estate, you can influence the future control of the trust through your Will.

### A separate legal entity

A variety of ownership structures can be used by a person during their lifetime to assist with protection of assets, tax effective distribution of income and transfer of control of assets. Discretionary family trusts (also known as inter vivos trusts) are a popular business or investment vehicle in which the trustee holds assets on trust for a group of beneficiaries, usually family members.

A trust is a separate legal entity and the trust, not the beneficiaries, owns the trust assets. If you are a beneficiary of a family trust, the trust assets do not form part of your estate and you cannot leave them in your Will.

It is important that you understand how a family trust operates and the roles within the trust, as this will affect how you plan your estate. These matters are established in the trust deed when the trust is set up, but the trust deed may have been varied by deeds of amendment.

### The trustee

The trustee is responsible for the day to day running of the trust. The trustee's powers are set out in the trust deed and their duties may include allocating the income and capital of the trust, administering the trust's investments, maintaining financial records and determining when the trust is wound up. The trustee may currently be you (either solely or jointly with others) or a company in which you hold shares.

If you are the sole trustee of your family trust, care must be taken in the appointment of your executor, as that person will usually become the trustee on your death. If the family trust has joint trustees who are individuals, on the death of one trustee the surviving trustees will continue as the trustees of the family trust. On the death of the last trustee, the executor of the estate of that trustee will normally become the trustee of the family trust.

If the trustee of your family trust is a private company, whoever becomes the majority shareholder in the private company will control the position of trustee for your family trust. You should take this into consideration when determining who will inherit your shares in the company.



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## The appointor

The appointor has ultimate control of the trust, as they are authorised by the trust deed to appoint and remove the trustee. The first appointor is generally the person who initiated the establishment of the trust.

A trust deed will normally provide the appointor with the power to nominate a new appointor in their Will. If you are the appointor, your Will can provide that the position of appointor will be transferred:

- equally to those of your beneficiaries whom you wish to have ultimate control of the family trust or
- to a person who may not be a beneficiary of the family trust but is someone who you consider will act in accordance with your intentions.

## The beneficiaries

A trust deed specifies the group of persons or entities who may receive distributions from the trust. There may be one group of beneficiaries who may receive ongoing income distributions ('income beneficiaries') and another group to whom the assets will be distributed when the trust is wound up ('capital beneficiaries').

Although the assets of a family trust do not form part of the personal estate of a beneficiary, it is important to consider who may ultimately receive the capital of a family trust. It may be that you wish persons who are not beneficiaries of the family trust to share equally in your estate with those who are beneficiaries. In that case, when preparing your Will, consideration should be given to equalising likely discrepancies in the overall distribution of the assets of your family trust and the rest of your estate.

## The vesting date

The vesting date is the date on which the trust must be wound up. It may be a date established in the trust deed or chosen at the discretion of the trustee.

If the family trust was established for the benefit of a particular family member, the trust may not need to continue after their death. The trustee of the family trust can then decide to wind up the trust and distribute the assets to the capital beneficiaries.

## Loans

During the operation of the family trust, you may have deposited personal funds into the trust, creating a loan from you to the trust. Loans may also exist between the trust and its beneficiaries if income has been allocated to the beneficiaries but has not been paid from the trust. These are usually recorded as beneficiary loan accounts and are liabilities of the trust.

Although the assets owned by the family trust do not form part of your estate, loans from you to the trust are an asset of your estate. When preparing your will, care must be taken to ensure that your death does not create a sudden need for the family trust to sell assets in order to repay the loan to your estate.

If you have withdrawn funds from your family trust as a loan, this will be a liability of your estate and will be repaid to the trust following your death.

## Would you like further information?

For further information please contact your AET Estate Planner on 1800 882 218.

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