

APPLICATION FORM

Change Of Trustee - Discretionary Trust and Unit Trust

Please read the following before completing the application form.

Work we may perform for you

We can assist with:

1. drafting documents evidencing a change of trustee;
2. undertaking a restructure of your group;
3. drafting a statutory declaration and the forms required by the Office of State Revenue (**OSR**) and Department of Natural Resource and Mines (**DNRM**);
4. attending to lodgment and notification with the OSR, DNRM and any other department; and
5. any related matters required.

What do we need from you?

We will require the following:

1. a copy of the trust deed;
2. any documents prepared in relation to the trust deed, including but not limited to:
 - a. deeds or documents varying the terms of the trust deed; and
 - b. deeds or documents evidencing a change of trustee, appointor or beneficiaries of the trust;
3. a copy of the current balance sheet or financials of the trust or a description of the assets of the trust, including any property details (or a copy of a rates notice).

If you have any questions about completing the application form please contact:

Christopher Davis

Principal

Phone: (07) 3014 6530

Email: cdavis@mcw.com.au

Anthea Faherty

Principal

Phone: (07) 3231 0645

Email: afaherty@mcw.com.au

By completing and submitting the form you confirm as follows:

- a. It is the purchaser’s responsibility to ensure that the information supplied is correct.
- b. If new documents have to be prepared as a result of errors in the information a further fee will be payable.

Please ensure you complete all details below, and contact us with any questions you have prior to submitting the form.

PRICES (GST EXCLUSIVE)

Change of trustee documents:	To be advised once documents have been provided
<ul style="list-style-type: none"> • Deed of Retirement and Appointment of Trustee; • Statutory declarations; • OSR Form D2.2; and • Attending to stamping of the change of trustee documents 	
If the trust holds property in Queensland	\$400 plus GST plus Titles Queensland Fees
<ul style="list-style-type: none"> • Form 1 Transfer and Form 24 Property Transfer Information • Attending to lodgement of the Form 1 Transfer and Form 24 Property Transfer Information with the Land Titles Office 	

PURCHASER’S DETAILS

- Full name
- Name of firm (if applicable)
- Email address
- Telephone number
- Fax number
- Street Address
- Postal Address
(if different from above)

TRUST DETAILS

Name of Trust		ABN
Establishment date		
Has the Trust Deed previously been varied?	Date	Doc title
	Date	Doc title
	Date	Doc title

Please attach a copy of the current Trust Deed and all variations to this application form.

CORPORATE TRUSTEE DETAILS (IF APPLICABLE)

Details of First Trustee

- Name of Corporate Trustee
(inc. ACN/ABN/ARBN)
- Registered Office Address
\$250 plus GST
plus Land Titles Office Fees

Suburb / City State Postcode

List the names of ALL directors 1.
2.
3.

This trustee is: Retiring Continuing Being Appointed

Details of Second Trustee (if any)

Name of Corporate Trustee
(inc. ACN/ABN/ARBN)

Registered Office Address

Suburb/City State Postcode

List the names of ALL directors 1.
2.
3.

This trustee is: Retiring Continuing Being Appointed

INDIVIDUAL TRUSTEE DETAILS (IF APPLICABLE)

Details of First Trustee

Same as Corporate Trustee 1

Surname

First Name(s)

Address

Suburb/City State Postcode

This trustee is: Retiring Continuing Being Appointed

Details of Second Trustee

Same as Corporate Trustee 2

Surname

First Name(s)

Address

Suburb/City State Postcode

This trustee is: Retiring Continuing Being Appointed

Details of Third Trustee

Same as Corporate Trustee 3

Surname

First Name(s)

Address

Suburb/City State Postcode

This trustee is: Retiring Continuing Being Appointed

Details of Fourth Trustee

Same as Corporate Trustee 3

Surname

First Name(s)

Address

Suburb/City

State

Postcode

This trustee is:

Retiring

Continuing

Being Appointed

PRINCIPAL(S) / APPOINTOR(S) DETAILS (IF APPLICABLE)

Details of First Principal / Appointor

Surname

First Name(s)

Address

Suburb/City

State

Postcode

Details of Second Principal / Appointor (if any)

Surname

First Name(s)

Address

Suburb/City

State

Postcode

BENEFICIARIES DETAILS (IF A UNIT TRUST)

Details of First Beneficiary

Surname / Entity name
(inc. ACN/ABN/ARBN)

First name(s)

Address

Suburb/City

State

Postcode

Details of Second Beneficiary

Surname / Entity name
(inc. ACN/ABN/ARBN)

First name(s)

Address

Suburb/City

State

Postcode

Details of Third Beneficiary

Surname / Entity name
(inc. ACN/ABN/ARBN)

First name(s)

Address

Suburb/City

State

Postcode

Details of Fourth Beneficiary

Surname / Entity name
(inc. ACN/ABN/ARBN)

First name(s)

Address

Suburb/City

State

Postcode

DUTY

Yes No

Does the trustee hold shares (directly or indirectly) in a company that acts as trustee?

Does the trustee hold an interest (directly or indirectly) in a company or listed unit trust that holds land in Queensland valued at \$2M or more?

Note: If you answered 'Yes' to either of the above you should seek advice regarding the duty implications of this transaction.

Description of assets

DOCUMENTS PROVIDED

Yes No

1. A copy of the trust deed.
2. Any documents prepared in relation to the trust deed, including but not limited to:
 - a. Deeds / documents varying the terms of the trust deed; and
 - b. Deeds / documents evidencing the change of trustee, appointor or beneficiaries of the trust.
3. A copy of the current balance sheet or financials of the trust; and
4. A description of the assets of the trust, (including any property details (or a copy of the rates notice) for each property held by the trust).

RETURNING THIS FORM

After completing this form please check the confirmation box below and either:

- print, sign, and fax it to McInnes Wilson Lawyers at (07) 3221 2921; or
- print, sign, scan, and email it to McInnes Wilson Lawyers at mcwonline@mcw.com.au

To print this form for signing click here:

To email this form to McInnes Wilson Lawyers, after confirming instructions below, click here:

CONFIRMATION OF INSTRUCTIONS

By signing or checking the box below the purchaser:

1. Agrees to purchase the goods and services indicated on this application form and acknowledges that legal or financial advice has not been given by McInnes Wilson Lawyers in relation to the preparation of the relevant documents(s).
2. Acknowledges that the provision of goods and services by McInnes Wilson lawyers is subject to the terms and conditions set out at www.mcwonline.com.au

Signed by purchaser

Date

OR

Confirmed by purchaser

Date

Note: This application form will not be processed by McInnes Wilson Lawyers unless this section is completed.

CREDIT CARD PAYMENTS

Please debit the following credit card for the supply of goods and services indicated on this application form.

Note: Payment by credit card will incur a fee of 1.07% (incl GST) for VISA and Mastercard, and 3% (incl GST) for AMEX, on the GST inclusive price.

Credit card:

Visa Mastercard American Express

Total Remitted: \$
 plus credit card fee specified above

Expiry date:

Cardholder's Name:

Card Number:

Cardholder's Signature:

Date:

Change Of Trustee Guide

1. NUMBER OF TRUSTEES

In order to maintain a trust, there must be a minimum of 1 trustee (whether an individual or a corporate trustee). There can only be a maximum of 4 trustees at any time in Queensland.

2. APPOINTMENT OF A TRUSTEE IN QUEENSLAND

Section 12 of the **Trusts Act 1973 (Qld)** (**Trusts Act**) deals with the appointment of a trustee. A trustee must consent to the appointment and agree to act as a trustee.

In Queensland, there is no requirement to replace a retiring trustee where there are 2 or more original trustees willing to act.

In the event that there is only 1 'original' trustee, the trustee must be replaced or alternatively, if the trust deed provides, the assets can vest with a settlor of the trust who is able to administer the trust according to the trust deed.

3. RETIREMENT OF TRUSTEE IN QUEENSLAND

Section 14 of the Trusts Act allows a trustee to retire with the written consent of its co-trustees, the appointor (if applicable) and the consent of the interest holders of the trust (e.g. unit holders).

The consent must provide for the vesting of the trust property in the continuing trustees.

If there are only 2 trustees and 1 decides to retire, the retiring trustee will not be released as a trustee unless the trust deed provides otherwise.

4. CAPITAL GAINS TAX (CGT)

The retirement or appointment of a trustee is not subject to CGT. When a change of trustee occurs, there is a change in the legal title and ownership of the property. However, the beneficial ownership to the property must remain the same.

5. TRANSFER DUTY IN QUEENSLAND

A change in trustee may amount to a transfer of the legal title to the trust property (if the trust holds dutiable property). In Queensland, the transfer of trust property is subject to transfer duty. However, an exemption under the **Duties Act 2001 (Qld)** excludes the retirement or appointment of a trustee from duty provided that the beneficiaries of the trust remain unaltered.

OSR will require evidence of the change of trustee. Consequently, you will need to complete a Form 2.2 claiming the number 4 concession which relates to the change of trustee.

Further, as there is a change in the legal title of the trust, you will be required to lodge a Form 1 and Form 24 with DNRM evidencing the transfer of the property to the new trustees or remaining trustees. DNRM will want to sight the original deed of appointment and/or retirement as proof of the retirement.

6. DUTY IN OTHER STATES

State	Duty Position
New South Wales	<p>A change of trustee will result in nominal duty of \$50 being payable (refer to section 54(3) of the Duties Act 1997 (NSW)) if the Commissioner is satisfied that:</p> <ol style="list-style-type: none"> 1. none of the continuing trustees remaining after the retirement of a trustee is or can become a beneficiary under the trust, and 2. none of the trustees of the trust after the appointment of a new trustee is or can become a beneficiary under the trust, and 3. the transfer is not part of a scheme for conferring an interest, in relation to the trust property, on a new trustee or any other person, whether as a beneficiary or otherwise, to the detriment of the beneficial interest or potential beneficial interest of any person. <p>If the Commissioner is not so satisfied, the transfer is chargeable with the same duty as a transfer to a beneficiary under and in conformity with the trusts subject to which the property is held.</p>
South Australia	<p>No duty applies to a change of trustee (section 71(5)(d), Schedule 2, Part 2, General Exemption 28 of the Stamp Duties Act 1923 (SA)).</p>
Western Australia	<p>Section 118 of the Duties Act 2008 (WA) provides that nominal duty of \$20.00 is chargeable on a transfer of dutiable property that is:</p> <ol style="list-style-type: none"> 1. made by a transferor to a trustee (other than a trustee of a unit trust or discretionary trust) to be held solely as trustee for the transferor without any change in the beneficial ownership of the dutiable property; or 2. made by way of re-transfer to the transferor, if no other person has had a beneficial interest in the property between the transfer to the trustee and the re-transfer.
Victoria	<p>No duty applies to a change of trustee as there is an exemption available in section 33(3) of the Duties Act 2000 (Vic).</p> <p>In determining whether the exemption applies, the Commissioner will consider, where:</p> <ol style="list-style-type: none"> 1. the circumstances in which the former trustee has retired or been removed and the new trustee was appointed; 2. the circumstances surrounding the transfer of the dutiable property itself; 3. whether the transfer of the dutiable property is part of a scheme for conferring an interest in relation to the trust property on a new trustee or any other person, whether as a beneficiary or otherwise, to the detriment of the beneficial interest or potential beneficial interest of any person. <p>Where the Commissioner is of the opinion that the change in trustee, which results in a consequent transfer of dutiable property, forms part of a transaction or a series of transactions that have a separate commercial objective the Commissioner will not be satisfied that the transfer is solely because of a change of the trustee. This will be so, irrespective of whether or not the effect of those transactions was to avoid the payment of duty. In such circumstances the exemption under section 33(3) of the Act will not apply.</p>

State	Duty Position
Tasmania	Nominal duty of \$50.00 (in accordance with section 37 of the Duties Act 2001 (Tas)).
Northern Territory	No duty applies to a change of trustee (item 6 of Schedule 2 of the Stamp Duty Act 2010 (NT)).
Australian Capital Territory	Nominal duty of \$20.00 (in accordance with section 54 of the Duties Act 1999 (ACT)).