



Hybrid Trust Structure - Frequently Asked Questions



- *Why is a Hybrid Trust different than any other Trust?*

- *What does the \$2,500.00 actually pay for?*

- *Who should I use for the Director/Secretary/Shareholder roles in the Trustee Company?*

- *In regards to the \$12.00 that is mentioned for the shareholding in the Trustee Company, do I need to pay this amount to my trust or deposit it into the bank account?*

- *What do I do with the Settlor's fee?*

- *Who do I get to sign as witness for the signatures at the back page of the Trust Deed?*

- *What exactly is my Settlor's role?*

- *Who should my Settlor be?*

- *What is my Appointor's role?*

- *Who should be the Special Income Unit Holder(s)?*

- *Do I need to include all my family members as Principal Beneficiaries?*

- *Why do I need to use a Company as Trustee for the Trust?*



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- *What name should appear of the contacts to buy property etc...*

- *Can the Trust own both my businesses and my investment assets?*

- *What name appears on the bank account?*

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- *Do I need to register the Trust for GST?*

- *Do I include my children as Beneficiaries?*

- *I hear that the Tax Office do not like Hybrid Trusts.....is that true?*



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Why is a Hybrid Trust different than any other Trust?

In a nutshell, a hybrid trust is a cross between a Unit Trust and a Family Trust. It was created to allow an individual to still get the tax advantages of negative gearing into investments, and the use of the refinancing principal whilst retaining the incredible advantages and flexibility of using a trust to buy wealth producing assets, such as Asset Protection, Estate Planning and longer term tax planning.

What does the \$2,500.00 actually pay for?

The \$2,500.00 covers just about everything! It includes the cost for setting up the trust AND the trustee company, all the relevant paperwork involved with the two entities such as the Certificate of Registration, Constitution and the Trust Deeds, the ABN and TFN, all relevant correspondence in regards to setting up your structure, stamping of the Trust Deeds at the Office of State Revenue and all postage and handling! It also includes all the assistance and advice in getting the structure up and going.

Who should I use for the Director/Secretary/Shareholder roles in the Trustee Company?

The answer to this can vary. Most of the time trusts are used for asset protection purposes, in which case the 'higher risk' person, so to speak should be nominated as Director and Secretary of the Trustee Company. The lesser risk person (provided there are joint people involved in the Company) would be nominated as sole Shareholder.

In regards to the \$12.00 that is mentioned for the shareholding in the Trustee Company, do I need to pay this amount to my trust or deposit it into the bank account?

This money is not needed to be paid into anything! This is money that has already been paid for when you set up the company. No actual cash transactions take place to pay for these shares; you buy purchase the company with them already paid for.

What do I do with the Settlor's \$10 Contribution?

The \$10.00 Settlor's contribution can either be a \$10.00 deposit into the newly set-up bank account for the trust, or a \$10.00 note can be stapled to the inside of the bound trust deed AFTER it has been stamped by the State Revenue Office.



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Who do I get to sign as witness for the signatures at the back page of the Trust Deed?

Witnesses for both the Authorized Person and the Settlor must be somebody unrelated to both these people. There must be separate witnesses; the same person can not witness both the Settlor and the Authorized Person. Compliance with this advice means there are no hold ups at the State Revenue Office and you get your stamped deeds returned nice and quickly.

What exactly is my Settlor's role?

The Settlor basically contributes an asset to the Trust (the \$10.00), signs the deeds and that's it! They aren't allowed to benefit from the Trust in any way, which is why it isn't allowed to be a family member.

Who should my Settlor be?

Your Settlor should generally be just a family friend and should never be a family member. We cannot act as Settlor for you.

What is my Appointor's role?

The Appointor is the most powerful person within a Trust structure. The Appointor's role is to appoint and "sack" the Trustee of the Trust.

Who should my Appointor be?

Because the Appointor is the most powerful person within the Trust it is important that you are involved as the Appointor. It can also be a joint position, so you can include a partner/husband/wife as a joint Appointor. Some experts even suggest that a third person be an appointor and this is something to discuss with your legal advisor.

Who should be the Special Income Unit Holder(s)?

The Special Income Unit Holder/s should be the person/s that would most benefit from the negative gearing aspect and the person/s on the highest income level.



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[Do I need to include all my family members as Principal Beneficiaries?](#)

You only need to include yourself, your partner and perhaps your children. Everyone else that is related to you is automatically a beneficiary.

[Why do I need to use a Company as Trustee for the Trust?](#)

The Trust needs a Trustee Company for asset protection purposes. You control the Trustee Company by being the director/secretary/shareholder, and the Trustee Company becomes associated with the Trust and its assets instead of an individual, which means you aren't open to attack. If you use individuals for the Trustee, the assets of the Trust can be reached if you are sued.

[What ongoing costs do I have with a Trust?](#)

You will have a fee of about \$200-\$300 each year with ASIC for the upkeep of your Trustee Company. On top of this, you will have accounting fees which will vary from year to year depending on the activities of the Trust. This also depends of the quality of the records you keep and the complexity of the issued taxed when doing the Trusts' tax. It can vary anywhere in between \$700 – \$ 2,000.00, and in some small cases it can exceed this amount.

[What name should appear of the contacts to buy property etc...](#)

Contracts for purchase should always go in the name of The Trustee Company. Finance and loans will go in personal names, usually in the name of the highest income earner.

[Can the Trust own both my businesses and my investment assets?](#)

Whilst technically, it can, I believe this would be putting all your eggs in one basket, so to speak. This compromises the asset protection integrity normally available. It would be much wiser to have one entity own the business and another owning the investment assets. We would normally resign as your accountant rather than allow your trust to own businesses and Investments.

[What name appears on the bank account?](#)

The full name is the same as on contracts, 'The Trustee Company ATF The Trust'.



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[Is there any bank in particular to use when nominating one for the bank account?](#)

Different people have used all different bank accounts; there is none in particular that has proved more popular than another. Shop around and find the best one that suits you when making the decision.

[How long does it usually take to set up a Trust and Trustee Company structure?](#)

If the structure has already been paid for and all the information had been given, then it can take about 48 hours for the trust to be alive. Occasionally it does take longer if there is an unusual word in the company name or it is a busy time of year. Please note that the stamping of the trust deed can take up to 28 days, as can the ABN and TFN.

[Is it any more difficult to gain finance using a Trust structure?](#)

It is a little harder to gain finance, more so if you don't know what you are doing. It is important to shop around and speak to the right people so that you have a good knowledge of what you are doing or looking for before you commit to something or someone. Speak to a few good brokers or banks about the structure because some institutions don't know a lot about Trusts and that can be where the difficulty lies. If you need help finding a broker speak to one of our Accountants, Bel or Alysha and they may be able to recommend one.

[What forms do I need to submit to the State Revenue Office?](#)

It is very important that a trust now completes a form to notify the SRO within one month of settlement whenever it buys or sells a property in Victoria. Your solicitor or conveyancer should assist you in completing these forms when you buy or sell a property, but, the onus is on you to prepare and lodge them.

[Can I buy my home inside a Hybrid Trust?](#)

No. The tax office have promised to attack this idea and so you should not do it. Furthermore, if a trust owns your home you will pay additional land tax and expose the home to CGT when it is sold - both of which do not happen when you own the home in your own name.

For asset protection reasons, it is possible to own the home within a normal discretionary, or family, trust but then you do not get any tax advantages from doing this.

If the matter is important to you, please see your solicitor and discuss your own personal circumstances with him/her and seek their advice.



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[Can I redeem my units at a later stage?](#)

Yes, one benefit of the Hybrid Trust is its ability to buy back, or redeem, the Special Income Units, from you. However, please be aware that this redemption will trigger a Capital Gain for you, even though the property in the trust has not sold; or has sold at a loss.

[Do I need to register the trust for GST??](#)

No, not at all unless you are:

- Buying commercial property
- Buying land for development and resale; or
- Buying properties for substantial renovation.

And, if one of these applies please talk to your accountant before proceeding.

[Do I include my children as Beneficiaries?](#)

Once upon a time, we used to recommend that you include as many of your immediate family members as possible as named beneficiaries of the trust. However, with changes to banking policy over the last couple of years, this now creates potential problems when borrowing money as all adult beneficiaries may be asked to act as guarantor to the loans.

Therefore, we now recommend that you limit the named beneficiaries to yourself and your partner.

This will in no way impact on your tax planning in terms of flexibility; but, may not be as flexible as we would have liked for estate planning purposes. So, if you are at all concerned about this matter please feel free to talk to one of the accountants; or your solicitor.

[I hear that the Tax Office do not like Hybrid Trusts.....is that true?](#)

Yes and No. The Tax Office has recently issued a couple of Private Binding Rulings that have not allowed tax deductions for some types of Hybrid Trusts. We expect that this recent trend will continue with inferior trust deeds.

However, the advice that we have received from our legal counsel is that the Hybrid Discretionary Trust that we use will continue to pass scrutiny, as it has in the past.

So, if you have any concerns at all about this matter, you would be wise to talk to us about your circumstances and/or seek independent advice as to whether the Hybrid Discretionary Trust is appropriate for you.