

# Upgrading a Discretionary Trust Deed without a Resettlement

Take care to do it as it says to do it

# Master Strategy Day 2021

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A line up of Master Strategists giving you their best high revenue earning SMSF, Tax, Asset Protection and Estate Planning strategies for the year.



March 26 2021 | 8:30am - 5:00pm AEDT | Online Event  
Cost: \$195 - 7 CPD and 7 CPE points



# The Resettlement Issue

Where a trust – whether it is a discretionary, fixed, child maintenance, self managed superannuation fund or testamentary trust is fundamentally changed, the old trust dies and a new trust is born. This is colloquially known as a resettlement.

Now how often have you been told not, in fact never touch a discretionary trust deed without a lawyer as it will be a resettlement. So in the cases of divorce, change of trustee, change of appointor or principal, adding income streaming or changing the vesting date of the trust – it is a resettlement.

Then came Bamford in 2010, a High Court decision that enabled streaming of franked dividends, overseas income and capital gains to different beneficiaries. The result – expensive discretionary trust upgrades by lawyers because of the fear of resettlement. Until the Commissioner of Taxation came along to save us all!

# The Agenda

- What are the problems with old discretionary trust deeds?
  - Not covering streaming of income in accordance with *Bamford v. FCT* [2010] HCA 10
  - May not have an appointor
  - May not have a succession of appointors to carry on control
  - Old, dead or redundant beneficiaries
- Is upgrading a resettlement – the definitive guide is the Commissioner of Taxation Determination – TD2012/21
- Review of two discretionary trust deeds and completing a deed upgrade in the LightYear Docs system
- The difference between a discretionary trust and a Leading Member discretionary trust
- Changing the name of a discretionary trust, beneficiaries, appointors, principals or trustee – unique LYD solution

# If it's too hard use Abbott & Mourly



- Some old deeds are relatively simple to upgrade
- Others can be problematic as they may enable a change in the rules but with exceptions for example the power of appointment may need to stay the same
- There may also have been a lot of other variations to trustee, appointor, beneficiaries, etc that may need to be worked through to see if the last variation was valid
- If you come across a discretionary trust deed that looks complex then you can get it upgraded at Abbott & Mourly for a fixed fee
- The process is to send it, we will review how complex it is and provide a quote.
- If it is not too complex our standard fee is \$595 for a trust deed upgrade and \$495 if you are a Strategist Member

# Let's look at some deeds to see the amendment or variation process



- The process in the deed must be followed
- Here is an example of a discretionary trust deed:  
<https://www.cleardocs.com/downloads/sample-discretionary-trust.pdf>
- Another deed for review:  
[https://www.legaledocs.com.au/storage/app/media/files/sample\\_docs/result\\_dt\\_deed\\_ind\\_trustees\\_sample%20WM%202022.06.20.pdf](https://www.legaledocs.com.au/storage/app/media/files/sample_docs/result_dt_deed_ind_trustees_sample%20WM%202022.06.20.pdf)
- What about a really old deed? Probably use Abbott & Mourly in this instance with a 1970 deed which is not a discretionary trust at all!!

# What's coming up

- Some big changes on the way over the next few months to make the platform sleeker and also more responsive to our users
- Shareholder and unitholder agreements are in the wings
- Significant updates and new Protector strategies with Protector Advanced – watch for the launch at the Master Strategy Day
- Have a new option to be launched so that the Will can provide specific gifts but a choice of going to a residual beneficiary or a singular bloodline testamentary trust
- Our SMSF death benefits testamentary trust will also be launched at the Master Strategy Day – so make sure that you are there!

