



LEGAL
CONSOLIDATED
BARRISTERS & SOLICITORS

National Law Firm

Head Office
39 Stirling Highway
Nedlands WA 6009

T: 1800 141 612

legalconsolidated.com.au

Your Reference: Declaration of Trust Before Purchase
Enquiries: Adj Professor, Dr Brett Davies
Direct Telephone: 1800 141 612
Email: brett@legalconsolidated.com

Thursday, 18 March 2022

Luxury Holding Pty Ltd /
11 Percy Road
Auburn NSW 2144
Australia

Build this legal document at

<https://www.legalconsolidated.com.au/>

[declaration-of-trust-before-purchase/](#)

- telephone us, we can help you

complete the questions.

Adj Professor, Dr Brett Davies - Partner

Dear Trustee,

Declaration of Trust (Before Purchase) Trust Deed

Thank you for instructing us to prepare the attached Declaration of Trust (Before Purchase) Trust Deed.

How to print your document

When you are satisfied that the document is according to your instructions please:

1. Download the PDF (Don't print directly from the browser.)
2. Print the PDF Printer settings: A4 paper
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document.
(However, do not staple the covering letter to the document)

Please read your Trust Deed to ensure that it expresses your wishes. When you are satisfied with the Trust Deed please print out three copies and sign all three.

To help you understand the nature of trusts and bare trusts, to follow is generic advice only:

What is a Trust?

Here is an example of a 'trust'. When your son is born you open a bank account in trust for him. You are the Trustee. The trust's beneficiary is your son. You hold the bank account in trust for your son. Your name appears on the bank account merely as the 'legal owner'. The 'true' or 'beneficial' owner is your son. It is your son that pays tax on the bank account interest. When your son is 18 years of age he can remove you as Trustee - and instead place you with another Trustee or himself as the 'legal owner'.

Beneficiaries of trusts are protected. For example, if you, as the Trustee, go bankrupt or get a divorce then the trust asset, being the bank account, is not lost. The bank account

is preserved for your son, who, as beneficiary, is the 'true' owner of the asset. The courts and the ATO 'look through' the trust to see who the 'true' owner of the assets are. In this case the 'true' owner is your son - not you.

Most people when they own an asset hold both the legal and beneficial interest in the asset. There is no trust if you hold both the legal and beneficial ownership. In contrast, in a trust the legal and beneficial interests are held by different people. One person is the legal owner - Trustee. The other person is the beneficial owner - beneficiary. A trust automatically exists when you separate the 'legal' and 'beneficial' ownership.

If your son, at 18, removes you as the Trustee and puts himself in as the legal owner, then the trust is finished - it is extinguished. This is because your son now holds both the 'legal' title and 'beneficial' interest. The split of the ownership has gone and the trust relationship no longer exists.

The trust asset can be anything, including real estate, shares, artwork, cars, bank accounts and cash.

Declaration of Trust Before Purchase 'hide from the next door neighbour'

This is the trust you have just purchased.

To illustrate the use of it, here is an example:

Let's say that you own 7 out of 8 of the units in the same block. The last unit finally comes onto the market. The vendor knows that you own all the other units and is going to hold out for a lot of money. But you never approach the vendor. Instead you get a friend to sign a *Declaration of Trust Before Purchase*. Your friend is the Trustee. You are the beneficiary.

You, as a Trustee, sign the *Declaration of Trust Before Purchase* first. Only then does your friend offer to buy the unit. The vendor sells the home to your friend - unaware that you are the true purchaser. Your friend delivers the contract of sale to you and using the *Declaration of Trust Before Purchase* the property settles in your name for no additional stamp duty or any CGT. The vendor is furious, but there is nothing he can do.

Your friend was just the 'Trustee' of the asset. You, as the beneficiary, own the asset in equity - you are the 'true' owner. At any time, the beneficiary can direct, the Trustee, to transfer the asset to the beneficiary. There is generally no stamp duty or CGT for the transfer from the Trustee to the Beneficiary.

In the interests of completeness, below are the other three types of bare trusts that are commonly used in Australia: This is generic information only:

Acknowledgement of Trust 'better late than never'

Sometimes, in the heat of the moment, you forget to sign a **Declaration of Trust Before Purchase**. While your Trustee proceeds to buy the asset for you, there is no deed yet to record that trust relationship. Trust relationships can exist whether they are in writing or not. They are just a lot easier to prove if everything is in writing.

Whether there is a deed or not the Trustee still 'owns' the asset merely as a Trustee for another person being the beneficiary.

The *Acknowledgement of Trust* is drafted after the above purchase by the Trustee. The *Acknowledgement of Trust* does nothing other than document what has happened in the past. It isn't trying to rectify or change anything, it is merely recording what actually happened in the past.

It would have been better to have documented this trust relationship Before the Trustee acquired the asset. Before the Trustee acquired the asset you should have built and signed a *Declaration of Trust Before Purchase*. But you didn't. So you are now documenting what you did in the past with an *Acknowledgement of Trust*. It is better late, than never.

The *Acknowledgement of Trust* merely sets out the facts that took place in the past. As an example you may say:

'Yes, as a Trustee, I acquired the asset, but it was, at all times, for the benefit of the beneficiaries. I have no interest in the asset other than as the Trustee. The money to pay for the asset came from the beneficiary, not from me. And I have plenty of evidence like cheque butts and emails to prove this.'

All the *Acknowledgement of Trust* is doing is recording, by way of Deed, the trust relationship that already exists.

There is a real risk that the state stamp duty office or the ATO may not believe you and seek to inflict stamp duty and CGT on the *Acknowledgement of Trust* Deed. Be careful. Make sure you have plenty of evidence that at all times the beneficial owner was and remains the beneficiary (cheque butts, bank statements, emails etc...)

You need to prove that this *Acknowledgement of Trust* changes nothing. You were always the Trustee of the asset for the beneficiary. You need evidence it has always been the case.

Why did the beneficiary want you, as Trustee, to acquire the asset as Trustee in the first place? There are many reasons - both personal and private. For example, the beneficiary may have wanted you to buy the asset as Trustee because the beneficiary didn't want the vendor, the public or a spouse to know what the beneficiary was up to.

Gifting Trust 'death bed declaration'

Before this trust is created the 'owner' holds both 'legal' and 'beneficial' interest in the asset. When the *Gifting Trust* is signed, from that point forward:

1. The 'owner' retains 'legal' ownership only, as Trustee
2. The beneficiary named in the Declaration is now the beneficial or 'true' owner

In other words, the 'owner' now holds the assets as bare Trustee for another person, being the beneficiary. The legal title remains with the 'owner': only the beneficial interest is transferred. Therefore, there is no change of ownership at the local titles office but there is still full stamp duty and Capital Gains Tax on the 'disposal' of the equitable or beneficial interest to the beneficiary.

In other words, the asset remains in the owner's name, but stamp duty and CGT apply because the deed transfers the beneficial ownership to another person - being the beneficiary.

The stamp duty and CGT is the same amount as if you transferred both the legal and equitable interest. The taxation regimes inflict stamp duty and CGT when the beneficial interest in an asset changes - not when the legal ownership is changed.

These are often call 'death bed declarations'. For example, Dad, knowing he will die shortly, using a *Gifting Trust* declares that he now holds all his assets in trust for his oldest son. After his death, the other children challenge his Will - but there are no assets in his Will. Therefore, there is nothing to challenge.

The other children are mortified. They scream: *'all these properties are in his name. He owned them.'*

That is true, but Dad owned them merely as Trustee. At death he had no beneficial interest in the assets because, before he died, he signed a *Gifting Trust*.

'But Dr Brett Davies said the 'Lang Hancock clause' in a Will does not work. He said that you can't stop the court from challenging your Will'.

Dr Brett Davies is right, nothing can usurp the court's power to rewrite your Will - but Dad had no assets that he beneficially owned in his Will. He had given them away via a *Gifting Trust* before he died.

At death, Dad was only the 'legal' owner. The 'true' owner or beneficial owner was his oldest son. The son got the asset 'inter vivos', that is, while dad was still living. Dad held the assets in trust for his son.

From that point on the son pays tax on income from the asset. The assets may still be in dad's name but the courts and the ATO look through the trust to the 'true' owner, and that is the oldest son.

Why wouldn't dad just transfer both the legal and equitable interest to his son? There are two reasons:

1. It takes time to transfer an asset. If it was a house then Dad would have to instruct his lawyers to prepare transfers, dig out the title deeds, sign everything and lodge it with the local titles office; and
2. Dad may not have wanted anyone to know how he has benefited the son - until after he has died

Bare Trust Deed 'hide what you own'

Before the *Bare Trust* is created the beneficiary is both the legal and equitable owner. Therefore, there is no trust in existence since the 'legal owner' and 'beneficiary owner' are the same person. In other words, the beneficiary, before this Bare Trust is signed owns both the 'legal' and 'equitable' interest in the asset.

In the *Bare Trust* the beneficiary transfers to the Trustee legal ownership only. Under the *Bare Trust* the beneficiary retains the beneficial interest in the asset. The Trustee only takes on the legal ownership. Neither before nor after the *Bare Trust* does the Trustee have any beneficial interest in the asset. The beneficial owner remains the beneficial owner.

The ATO and stamps office look through the trust and see that the 'true' owner, the beneficial owner has not changed. Therefore, there is generally no stamp duty or CGT

implications. The beneficial owner (not the legal owner) continues to pay tax on any income generated by the asset. The beneficial owner continues to be liable for the costs of maintaining the asset.

Nothing changes except that the asset is now in the hands of another person - the Trustee. For example, if it was land your lawyer would prepare a transfer and transfer the property, pursuant to the *Bare Trust*, to the Trustee, generally, without any CGT or stamp duty.

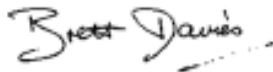
Why would you use a Bare Trust?

You may feel vulnerable in the public and reporters knowing what land you own. It is no one's business, other than your own, and the ATO, of course. You transfer your real estate to a bare Trustee for no stamp duty or CGT. When someone does a search at the local titles office your name does not appear anywhere.

Again, you have only built the *Declaration of Trust Before Purchase*. The other three bare trusts are just to help show you how bare trusts operate.

This now concludes the matter. Thank you for your instructions.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD
National Taxation Partner
LEGAL CONSOLIDATED BARRISTERS & SOLICITORS

This is a sample of the document you are building on our law firm's website.

Depending how you answer the questions the document and our letter may be different.

We have a 100% money back guarantee. For any reason you can return the document to us for a full refund.

*Dr Brett Davies
Partner
Legal Consolidated Barristers & Solicitors*

Resolution by the Trustees

Held at

Onday of20.....

Trustee full name(s) ("Trustee"):

Luxury Holding Pty Ltd ACN 186 986 232
11 Percy Road, Auburn NSW 2144, Australia

Quorum: It was noted that a quorum was present at the meeting.

Notice of Meeting: It was noted that all the above persons receive notice of this meeting and that all consent to the meeting being held and waive any requirement for any specified period of the notice of the meeting. It was resolved unanimously that the meeting is validly constituted regardless of any failure to give notice as required under any rules, Constitutions or the Corporations Act.

Chairperson: It was resolved that the person signing these minutes be the chairperson (Chairperson).

Upon tabling the declared and fully executed Trust Deed that established the *Declaration of Trust (Before Purchase) Deed*: IT WAS RESOLVED that:

1. the Trustee(s):accepts the role of Trustee of the Trust Deed.
Luxury Holding Pty Ltd ACN 186 986 232
11 Percy Road, Auburn NSW 2144, Australia
2. the Trustee has received a copy of the Declaration of Trust (Before Purchase) Deed.
3. the Trustee will carry out such duties according to law.
4. authority is given to allow Bank Accounts to be opened and updated, as required.

Closure: There being no further business the meeting was declared closed.

Signed as a true and correct record of the meeting immediately after the meeting.

..... Person chairing the meeting

Build the legal document at <https://www.legalconsolidated.com.au/declaration-of-trust-before-purchase/> – telephone us. We can help you answer the questions.

On our law firm's website, you:

1. Retain legal professional privilege
2. Receive legal advice
3. Get a signed letter on our law firm's letterhead with the legal document
4. We take responsibility for the legal document

Only a law firm provides the above. We also offer a 100% money back guarantee on every document you build.

Adj Professor, Dr Brett Davies - Partner



LEGAL
CONSOLIDATED
BARRISTERS & SOLICITORS

National Law Firm

Head Office
39 Stirling Highway
Nedlands WA 6009

T: 1800 141 612

[legalconsolidated.com.au](https://www.legalconsolidated.com.au)

Declaration of Trust (Before Purchase) for

- 2021 BMW X7 Registration Number:
POI 986

This Deed is made by:

Luxury Holding Pty Ltd ACN 186 986 232
11 Percy Road, Auburn NSW 2144, Australia

(Trustee)

and

Jonathan Wu
of 12 Potter Avenue, Russell Lea NSW 2046, Australia

(Beneficiary)

1 Introduction

1.1 The Beneficiary is considering making an offer to purchase:

- 2021 BMW X7 Registration Number: POI 986
(Trust Asset) from the Vendor (Contract).

1.2 The Beneficiary has approached the Trustee to make the offer and the ensuing Contract in the capacity of Bare Trustee for and on behalf of the Beneficiary.

1.3 The Trustee agrees to do so under the terms of this Deed.

1.4 What do these words mean?

In this Deed:

- 1.4.1 words importing persons include corporations
- 1.4.2 a reference to a person includes that person's personal representatives, successors in title transferees and assigns
- 1.4.3 a reference to any Act or Statute (State or Federal) includes all re-enactments for the time being in force; the headings used in this Deed are for ease of reference only and do not affect its construction of interpretation
- 1.4.4 any covenant or agreement in favour of any two or more persons binds them jointly and severally and further where 2 or more persons are parties to this Deed the covenants and agreements of their part will bind and be observed and performed by them jointly and each of them severally
- 1.4.5 except for any writings on the front page or in the Reference Schedule headings will not affect the interpretation of this document
- 1.4.6 a reference to one person is a reference to one or more persons
- 1.4.7 the Introduction is by reference included in the operative provisions of this Deed

Let's say that you own 7 out of 8 of the units in the same block. The last unit finally comes onto the market. The vendor knows that you own all the other units and is going to hold out for a lot of money. But you never approach the vendor. Instead, you get a friend to sign a Declaration of Trust BEFORE You Buy.

2 Dictionary

2.1 Contract includes any contracts from counter-offers or amendments to the offer

2.2 Trust Asset including all indicia of title and all other related benefits attached or related to the Trust Asset

2.3 Vendor(s):

North BMW Dealer Pty Ltd ACN 694 986 326

34 Alt Lane, Ashfield NSW 2131, Australia

or such persons who own or collectively own the Trust Asset

3 How does the declaration of trust operate?

- 3.1 The Trustee acknowledges that the Trustee is to make any offers and sign the Contract in the capacity of Bare Trustee for the sole benefit of Beneficiary.

4 What beneficial interest does Trustee keep?

- 4.1 Trustee also declares and acknowledges that Trustee will have no beneficial interest in the Trust Asset.
- 4.2 The Trustee must at the request and cost of the Beneficiary transfer the Trust Asset to the Beneficiary or otherwise deal with the Trust Asset as the Beneficiary directs.
- 4.3 Nothing in this Deed entitles the Trustee to beneficial ownership of the Trust Asset or to deprive the Beneficiary of the rights of beneficial ownership (including the right of possession) of the Trust Asset.
- 4.4 The Trustee must notify the Beneficiary of all notices, assessments, demands which the Trustee receives for the Trust Asset and promptly pay all such outgoings including rates, taxes and charges of all kinds from funds of the Beneficiary.

5 Beneficiary's instructions

- 5.1 The Trustee may accept any instruction or direction from the Beneficiary in writing and either from the Beneficiary personally or from any person acting on behalf of the Beneficiary or from any company which the Trustee may have reason to believe is giving such instruction on behalf of or with the authority of the Beneficiary.
- 5.2 The Trustee will not incur liability or be responsible by reason of the Trustee acting on or carrying out any such instruction or direction.
- 5.3 If there is more than one Beneficiary, the Trustee may accept the instruction or direction of any one or more of the Beneficiaries.
- 5.4 In the absence of instructions from the Beneficiary the Trustee may act as the Trustee sees fit for the sole benefit of the Beneficiary and the Beneficiary is bound by the acts of the Trustee in this regard.

6 Trustee's discretion

The Trustee may, without prior reference to or authority from the Beneficiary, make such decisions and take such action or refrain from taking such action, as the Trustee may in its discretion decide, over the Trust Asset. The Beneficiary is bound by all such actions or decisions of the Trustee without having any recourse against the Trustee. The provisions of this clause does not operate to protect the Trustee for dishonesty or wilful neglect of the Trustee in carrying out its duties or delegations under this Deed.

7 Obligations of the Beneficiary

- 7.1 Beneficiary to provide funds:

You, as a Trustee, sign the [Declaration of Trust BEFORE You Buy](#) first. Only then does your friend offer to buy the unit. The vendor sells the home to your friend – unaware that you are the true purchaser. Your friend delivers the contract of sale to you and using the [Declaration of Trust BEFORE You Buy](#) the property settles in your name for no additional stamp duty or any CGT.

The Beneficiary must provide the Trustee with all moneys which may be required by the Trustee to enable the Trustee:

- 7.1.1 To hold and to continue to hold and maintain the Trust Asset as Beneficiary;
- 7.1.2 To perform and comply with the terms of any mortgage or charge on the Trust Asset, at the request of the Beneficiary either alone or with the Trustee, or the Beneficiary, enter for the Trust Asset, as and when such mortgage or charge is required to be, or in the opinion of the Trustee should be, paid. Nothing in this clause shall be taken as requiring the Trustee to enter into any mortgage or charge on the Trust Asset.
- 7.2 Indemnity
 - 7.2.1 The Beneficiary indemnifies the Trustee as against any loss or damage of any actions or claims arising out of the Trustee acting as Trustee of the Trust Asset.
 - 7.2.2 The Trust Asset is charged with and is security for the Trustee in respect of these trusts in respect of all rights of reimbursement and indemnity under this Deed.

Your friend was just the 'trustee' of the asset. You, as the beneficiary, own the asset in equity – you are the 'true' owner. At any time, the beneficiary can direct, the Trustee, to transfer the asset to the beneficiary. There is generally no stamp duty or CGT for the transfer from the Trustee to the Beneficiary.

8 Who pays for this Deed?

The Beneficiary pays the costs of and incidental to the instructions for and the preparing signing and paying duty (if any) of this Deed and the counterparts of this Deed and all duties payable on this Deed.

9 What happens if part of this Deed becomes unenforceable?

If any part of this Deed is or becomes void or unenforceable then that part is severed from this Deed so that all parts that are now or after valid or enforceable shall remain in full force and effect and be unaffected by any severance.

10 What law applies to this Deed?

Unless the parties unanimously agree in writing otherwise, the jurisdiction is the State or Territory in which the Trustee resides, as evidenced by the Trustee's address in this Deed.

Executed as a Deed on the day of 20

EXECUTED for and on behalf of
Luxury Holding Pty Ltd
ACN 186 986 232
Member, by authority of its Directors in
accordance with section 127
Corporations Act 2001 (Cth)

Signature of Director or Secretary

Signature of Director (if a 2nd)

SIGNED, SEALED AND DELIVERED by
Jonathan Wu

Jonathan Wu

(Signature of witness)

(Name of witness)

You can build this document here:
[https://www.legalconsolidated.com.
au/declaration-of-trust-before-
purchase/](https://www.legalconsolidated.com.au/declaration-of-trust-before-purchase/)