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National Law Firm

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Your Reference: Dean's another deed of gift for sample
Enquiries: Adj Professor, Dr Brett Davies
Direct Telephone: 1800 141 612
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Tuesday, 6 September 20

Lee Hwa Holdings Pty Ltd
23 Rossmore Avenue
Punchbowl NSW 2196
Australia
as Trustee for the Lee Hwa Trust

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we can help you complete the questions.

Adj Professor, Dr Brett Davies – Partner

Dear Donor,

Deed of Gift

Thank you for instructing us to prepare the attached **Deed of Gift**.

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.)

A Deed of Gift is a Deed. It is signed by the Donor. It states that the Donor voluntarily and without payment gifts the Asset to the Recipient.

Who do we act for?

We confirm that Legal Consolidated only acts for the Donor. And when there is more than one Donor, we only act for the first named Donor as appearing in the Deed of Gift.

Further, we only act for the Donor in their personal capacity. Where the Donor is acting for another person or as a trustee then we expressly do not act for that person or trust.

All such persons, including the Recipient, need to seek their own independent legal advice, from another law firm.

Why use a Deed of Gift?

For example, when a father hands money or an asset to a wife or child it is considered to be a gift. But when a wife or child hands money or an asset to the husband it is deemed to be a loan. There are many other strange rules. To put the matter beyond doubt the Deed of Gift clearly sets out that the asset is a gift - with no strings attached.

When to use a Deed of Gift?

You build a Deed of Gift where:

- (i) the donor makes a gift to the recipient, and
- (ii) there are no conditions imposed in the making of the gift.

So, for example, when the donor dies there is evidence that the gift was a gift and does not need to be paid back to the estate.

The Deed of Gift gifts the asset to the recipient. The gift takes place before you die. It therefore happens outside of the Will. The gift cannot be challenged like a gift being made in a Will.

This is assuming the donor was of sound mind and not forced to sign the Deed of Gift. Get a doctor's certificate saying you are of sound mind and keep that with the Deed of Gift.

Does the Donor have authority to make the gift or sign the Deed of Gift?

Before you sign the Deed of Gift check with your lawyer and accountant as to whether you own the gift and whether you have authority to hand it over or even sign the Deed of Gift.

Depending on your individual circumstances, your accountant will ask questions such as:

1. Does the asset being gifted belong to someone else?
2. Is it an asset belonging to a trust or a superannuation fund?
3. Is the money coming from a joint bank account? Are both owners of the bank account signing as Donors?
4. Is the asset being held in trust for someone else? Do you have their written permission to gift it away?
5. Is there an encumbrance over the asset (e.g. a mortgage or caveat)?
6. Is it legal to gift the asset? (Is it subject to ongoing matrimonial proceedings?)
7. Do you have mental capacity to enter into such a Deed?
8. Is there a better or more tax effective way to deal with the Asset?

Do the Donors have mental capacity to sign the Deed of Gift?

The attached Deed of Gift can be attacked. This is by arguing that some or all the parties that signed the Deed of Gift lacked mental capacity.

To sign a Deed, or enter into any legal agreement, you need to be of sound mind.

To reduce the chance of someone arguing that you lacked mental capacity get a doctor's note. This is to say you are of sound mind. And keep all such doctor notes with your Deed of Gift.

The Donor needs to get a doctor's certificate. And where the Donor is a company then the director needs to get a doctor's certificate. This is to confirm that the director is of sound mind.

To put the matter beyond doubt every human that signs the attached Deed of Gift needs to have a doctor's certificate to say they are of sound mind.

The doctor's note should be obtained on or around the date that the attached Deed of Gift is signed.

Are the Donors tricked or coerced into signing the Deed of Gift?

Another way to render the Deed of Gift of no effect is to argue that the Donor did not sign the Deed freely. There is no free will.

The person making the attack argues duress, undue influence or elder abuse. Duress is when you are forced to do something against your own will.

The signing of the attached Deed of Gift should be treated to the same high standard that is given to the signing of a Will. For example, the people potentially benefiting should not be anywhere near the Donors when they sign. In particular, the Recipient (including their spouse and related parties) should not be in the vicinity of the Deed of Gift when it is being signed.

This reduces the argument that the Recipient brought illegitimate pressure to force the signing of the Deed of Gift.

Who should witness the signatures?

The witnesses should be people of substance, over 18 years of age, of sound mind and not involved in the transaction. If someone challenges the validity of the Deed of Gift in the courts, then the witnesses will need to testify as to the circumstances of the signing. Who was in the room? Did the Donor look flustered or worried? What is your relationship with the Recipient?

No advice on Tax, Transfer (Stamp Duty) and other imposts and regulations

We confirm that Legal Consolidated has not been instructed to provide any advice on the implications of this Deed of Gift or the gift itself for tax, capital gains tax, transfer (stamp duty), Centrelink, section 100A ITAA, reimbursement agreements, debt forgiveness or any other purpose.

Before signing this Deed of Gift or making any gifts speak with your lawyer, financial planner and accountant regarding the taxation and other consequences of making such a gift.

Also consult with a financial planner on whether making the gift or signing the Deed of Gift is in your best interests.

Without limiting the above, we make these general comments, if:

1. you are gifting money to an employee there may Fringe Benefit Tax.
2. a company gives money or assets then there may be Division 7A ITAA 1936 issues.
3. you are on a government pension there may be a loss of Centrelink or similar benefits under 'deprivation' and other rules.
4. you are gifting to a charity you may get a tax deduction (but if you cannot use the tax deduction it may be better to gift the money to someone that is paying tax and let them gift the money to the charity, instead).

What about the actual transfer of the Asset to the Recipient?

Some assets require the legal or physical transfer or possession to confirm that ownership has taken place. Indicia of title may be a legal condition precedent for the gift to take place or be valid.

For example, if you gift a car then there is a process to transfer the car and pay the taxes and fees at the government department.

Or, if you are gifting real estate then you will need your commercial lawyer to prepare transfers, remove caveats, payout mortgages, pay stamp duty and Capital Gains tax etc.. to then lodge the transfer at the titles office to transfer to property to the Recipient.

Some licences and other assets that you are seeking to give away may require government permission to do so.

Depending on the asset the gift may fail or be lost if you do not act promptly in a certain way.

Legal Consolidated does not provide advice on the above. Speak with your accountant, lawyer and financial planner on such matters.

Updating your Wills and Power of Attorneys

We suggest that you consider speaking with your accountant and estate planning lawyer to prepare or update your:

- **3-Generation Testamentary Trust Wills** (if you have an existing Consolidated Will then you can update it for free)
- **Enduring Power of Attorney**
- **Medical/lifestyle Power of Attorney**
- **Loan Agreements** between family members
- **Deeds of Debt Forgiveness** and **other Deed** (if a family trust owes to beneficiaries (Unpaid Presentments))

And when you have a company

- **Power of Attorney for a company**
- **Shareholders Agreement**

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

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD
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Adj Professor, Dr Brett Davies - Partner



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Deed of Gift

Lee Hwa Holdings Pty Ltd ACN 454 652 974
as Trustee for the Lee Hwa Trust

(Donor)

and

Tom Lee McArthur
as Trustee for the Tom's Assets Pool Trust

(Recipient)

This Deed is between:

Lee Hwa Holdings Pty Ltd ACN 454 652 974
of 23 Rossmore Avenue, Punchbowl NSW 2196, Australia
as Trustee for the Lee Hwa Trust

(Donor)

and

Tom Lee McArthur
of 23 Mount Street, Glen Waverley VIC 3150, Australia
as Trustee for the Tom's Assets Pool Trust

(Recipient)

Background

- A. The Donor owns the Asset.
- B. The Donor desires to gift and grant the Asset to the Recipient as a gift for natural love and affection, or otherwise.
- C. The Donor will gift the Asset under this Deed of Gift.
- D. The Recipient will accept the gift of this Asset under this Deed of Gift.

1 Dictionary

These words mean:

Asset 2010 Mercedes S Class, Black, registration: BATMAN including all right, title, and interest.

Deed or **Deed of Gift** this deed

Donor includes executors, administrators, personal representatives, successors and assigns of the Donor.

Gifting Date the date that the Asset was given or transferred to the Recipient or the date the Deed of Gift was signed, whichever is the earlier.

Recipient includes executors, administrators, personal representatives, successors and assigns of the Recipient.

2 What Happens?

- 2.1 **NOW THIS DEED WITNESSETH** that the Donor, without any monetary consideration, for natural love and affection (or otherwise) which the Donor bears to the Recipient hereby grants and transfers by way of gift the Asset to the Recipient on the Gifting Date. The Recipient accepts the gift of the Asset on the Gifting Date.
- 2.2 The Donor is the owner of the Asset. The Recipient, or the Recipient's advisers (if any) has carried out all due diligence as it sees fit as to the ownership and power of the Donor to so deal with the Asset.

2.3 The Donor is authorised to enter into and sign the Deed of Gift in relation to the Asset.

2.4 The parties to the Deed of Gift irrevocable acknowledge that the law firm preparing this Deed of Gift, as per the cover page, is acting only with the Deed of Gift, only acts for the Donor, and is not acting for the named Donor. And that all other persons, including the Recipient, should seek their own legal advice from their own lawyers.

2.5 The parties to the Deed of Gift irrevocable acknowledge that the law firm has provided no advice on the implications of the gift itself for tax, capital gains tax, transfer (sections 100A *Income Tax Assessment Act 1936*, *Income Tax Assessment Act 1997*, reimbursement of the Foreign Investment Review Board or any other matter.

2.6 Further, the law firm has not been instructed to advise on the future ownership, possession or structuring of the Asset. The due diligence carried out, by the law firm, on whether the Donor has the mental capacity or right to so deal with the Asset is limited. Each party, including the Donor, must seek their own legal advice on these matters.

2.7 The parties, including the Donor, must each seek their own accountant, lawyer and financial planner before they enter into or otherwise deal with the Asset or seek to rely on the law firm. This Deed has not provided any such advice or performed any aspect of the due diligence in respect of the Deed, Asset or any other matter.

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

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3 Costs and Charges to affect the Transfer?

3.1 Unless the Donor otherwise states, by way of minute, the Recipient pays any costs relating to the instructions for and the preparing, executing, transfer duty, stamping (if any) and registering of this Deed of Gift and any discharge.

3.2 Unless the Donor otherwise states, the Recipient pays all duties and stamp duty payable (if any) for any transaction required and all filing and registration fees to effect the transfer.

3.3 Each party has, before signing the Deed of Gift, received advice from their accountant (or have chosen to do their own due diligence) as to effect of this Deed of Gift including such matters such as tax, transfer (stamp duty) and all other matters.

4 Where Either Party is acting as trustee

4.1 When either party is acting in the capacity of trustee, then that party warrants that that party has the power in the capacity as trustee to so deal with the Asset.

5 What are the other Terms of the Deed of Gift?

5.1 Where Either Party is a Company

Where either party is a company all current and future directors agree to be bound by this Deed of Gift jointly and severally.

5.2 Proper Law

This Deed of Gift is governed and construed according to the laws of the State or Territory in which the Donor resides in, as evidenced by the Donor's address in this Deed of Gift. Each party irrevocably submits unconditionally to that jurisdiction and of all courts competent to hear appeals for any legal action, suit of proceeding arising from this Deed.

5.3 Effect of Signing

This Deed of Gift is binding upon each person who signs it.

- 5.3.1 the failure of any other person named as a party to them.
- 5.3.2 the avoidance or unenforceability of any part of this Deed of Gift.
- 5.3.3 the avoidance or unenforceability wholly or partly in favour of any person named as a party to them.

You can build this document here:

[https://www.legalconsolidated.com.au/
deed-of-gift/](https://www.legalconsolidated.com.au/deed-of-gift/)

5.4 Severability

If any part of this Deed of Gift becomes void or unenforceable then only that part is severed from this Deed of Gift. All parts that are not void remain in full force and remain unaffected by the severance.

6 Decision making in more than one place and Notices

- 6.1 This Deed of Gift may be signed in different locations by signing identical documents and all counterparts together constitute the Deed of Gift.
- 6.2 Meetings and decision making can be conducted in more than one place via telephone, the Internet or other means.
- 6.3 Notices may be provided via the post or email.

7 Interpreting the Deed of Variation

In this Deed of Gift unless the context indicates a contrary intention:

- 7.1 headings are for convenience only and do not affect interpretation
- 7.2 a reference to a 'person' includes a reference to: an individual; body corporate (wherever incorporated); body politic; association of persons (whether incorporated or unincorporated) partnership; trust; person in the capacity as a trustee; person in the capacity as the personal representative of a deceased estate and superannuation fund
- 7.3 the plural includes the singular and vice versa and a reference to any gender includes every other gender
- 7.4 a reference to the Deed of Gift includes a reference to any amendment, novation, variation, supplemental deed or replacement from time to time
- 7.5 a reference to any party to this Deed of Gift includes successors or permitted assigns
- 7.6 a reference to laws in this Deed of Gift refers to those laws as amended or replaced as consistent with the overall purpose of the Deed of Gift and does not lead to an anomaly
- 7.7 a reference to any statute, or any subordinate legislation or instrument includes all statutes, subordinate legislation or instruments amending, modifying,

consolidating, re-writing, re-enacting or replacing them and a reference to a statute includes all subordinate legislation and instruments made under that statute

Executed as a Deed on the day of 20

EXECUTED for and on behalf of
Lee Hwa Holdings Pty Ltd
ACN 454 652 974
as Trustee for the Lee Hwa Trust
Donor, 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
Tom Lee McArthur
as Trustee for the Tom's Assets Pool Trust
Recipient:

Tom Lee McArthur

(Signature of witness)

(Name of witness)