



LEGAL
CONSOLIDATED
BARRISTERS & SOLICITORS

National Law Firm

Head Office
39 Stirling Highway
Nedlands WA 6009

T: 1800 141 612

legalconsolidated.com.au

Your Reference: Family Trust – Vesting Deed
Enquiries: Adj Professor, Dr Brett Davies
Direct Telephone: 1800 141 612
Email: brett@legalconsolidated.com

Tuesday, 16 March 2022

ALI Holdings Pty Ltd ACN 482 894 834
2 Hampden Drive
North Sydney NSW 2060
Australia

Build this legal document at

[https://www.legalconsolidated.com.au/](https://www.legalconsolidated.com.au/family-trust-vesting-deed/)

[family-trust-vesting-deed/](https://www.legalconsolidated.com.au/family-trust-vesting-deed/) –

telephone us, we can help you

complete the questions.

Adj Professor, Dr Brett Davies - Partner

Dear Trustee,

Vesting the Ali Family Trust

Thank you for instructing us to prepare the attached Family Trust Vesting 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.)

We confirm that we act for:

ALI Holdings Pty Ltd ACN 482 894 834
2 Hampden Drive, North Sydney NSW 2060, Australia

(Trustee)

as Trustee of the Ali Family Trust (Trust).

Thank you for building the attached documents to wind up (vest) your Trust. These documents are:

1. The Vesting Deed
2. Vesting Minutes
3. Checklist for Winding up a Trust
4. Certificate of Vesting

Provided you are satisfied that the documents are according to your instructions, please arrange for all parties to sign and date all copies.

A Trust Deed will nearly always specify a date on which the interests in the Trust vest and contain a clause which specifies the consequence of that date being reached (for example, that the property is to be held from that date for the takers on vesting in equal shares absolutely). This is to ensure that the rule against perpetuities is not breached. The date is commonly labelled in the deed as the 'Vesting Date' or 'Termination Date'.

Prior to a Trust's vesting, it may be possible for the Trustee or a Court to vest the Trust at an earlier date following proper exercise of a valid power under the deed. Determining whether the Trustee has the power to amend the deed to change the vesting date requires a careful consideration of the terms of the Trust Deed. For example, although a Trustee may have a general power to amend the Deed, there may also be specific exclusions from the scope of that power. The power might also be limited to permitting the Trustee to bring forward the date on which the Trust vests and not permit extending that date. In this instance you are shortening rather than extending the vesting date.

Further:

1. We have amended, in the Vesting Deed, the Trust Deed to allow for an earlier vesting; and
2. You have instructed your accountant, before the signing of the Vesting Deed, to distribute out all the assets and pay out all the liabilities including tax and future liabilities. Your Trust therefore will have no assets. Under Trust law a Trust no longer exists if it has no assets. Therefore, while there is no Capital Gains Tax (CGT) or Transfer (stamp) Duty on the Vesting Deed, your accountant will need to deal with any CGT or duty prior to the distribution of the assets. We can assist your accountant if required.

Why terminate the Trust?

There are many reasons why it may have become necessary or prudent for you to wind up your Trust. They may include:

Trust has achieved its original purpose – This may be the case if your Trust was created to serve a specific purpose, such as to conduct the business affairs of a beneficiary, or to look after a business that is now sold.

The controllers of the Trust are not able to continue – The controllers of your Trust (Trustees, Appointors or Guardians) may no longer be able to continue in their role. They may not want to hand over control to others – instead they may just want to wind up the Trust. This is not usually fatal to the Trust, although there may be circumstances that make winding up the Trust the best course of action – for instance, where the Trustee is a company and the company is being wound up.

The Beneficiaries may wish to terminate the Trust – The Beneficiaries of the Trust may wish to terminate the Trust so that they can take both legal *and* beneficial possession of their entitlements under the Trust. This will only be possible if:

1. All Beneficiaries are *sui juris* (over 18 and of sound mind);
2. The Beneficiaries all have an absolute entitlement to the Trust Fund; and
3. All the Beneficiaries instruct the Trustee to terminate the Trust.

This is generally not possible for most discretionary Trusts as the class of Beneficiaries is too wide to make this feasible.

The Trust has become insolvent – If a Trust has zero assets it has effectively come to an end (There is no Trust if no property is legally owned for another person's benefit). However, if the Trust has become insolvent it may be prudent to terminate it with a degree of certainty so that the Trustees are afforded some degree of protection from future legal action.

The Trustees or controllers want to relinquish responsibility for the Trust – The persons with the responsibility for the Trust (Trustees, Guardians and Appointors) may wish to be certain that their obligations have officially ended.

The Trust has reached its vesting date – In most states a Trust can only last 80 years. After 80 years the capital of the Trust must be distributed to the appropriate beneficiaries.

Can you terminate the Trust?

Generally, when a Trust is established, the Trustee is given the power to bring forward the vesting date to a date which they can determine. This is the most satisfactory way to terminate the Trust. Alternatively, the Trustee may have been expressly granted the power to 'revoke', 'terminate' or 'appoint' the Trust.

Not all Trusts can be terminated before their vesting date (which is usually 80 years after it was established). For instance, the Trustee may not have been granted the power to bring the vesting date forward when the Trust was set up. If that is the case, the Trustees' powers must first be amended (by a deed of variation) to grant them this capacity. However, to be able to do that, there must be a power granted to the Trustee within the Trust Deed to amend the Trust. If this power does not exist it will not be possible to terminate the Trust before its original vesting date.

For these reasons a solicitor needs to review the Trust Deed to determine whether, and under what circumstances, it is possible to wind up the Trust. It is often the case that the Trust Deed, or later amendments, contain specific provisions specifying or limiting the conditions under which the Trust can be wound up. Generally, however, the Trustee, Appointor or Guardian will have the discretion to revoke the Trust.

Taxation implications of winding up the Trust:

As mentioned above, you have instructed your accountant, before the signing of the Vesting Deed, to distribute out all the assets and pay out all the liabilities including tax and future liabilities. Your Trust therefore will have no assets. Under Trust law a Trust no longer exists if it has no assets. Therefore, while there is no CGT or Transfer (stamp) duty on the Vesting Deed, your accountant will need to deal with any CGT or duty on the prior to the distribution of the assets.

We can assist your accountant if required.

Distributing assets out of a Trust has complicated and significant taxation consequences for the Trustee of the Trust (and therefore for the beneficiaries). Although you have not asked us to provide taxation advice on this issue below are some important points to take into account. See your professional advisor and accountant for advice on these issues.

Resettlement: The first potential tax issue when winding up a Trust is the risk of 'resettlement'. A resettlement occurs when, because of changes made to a Trust, the law deems the existing Trust to be terminated and that a new Trust has been established. This can have severe CGT and duty consequences.

A resettlement may occur when bringing forward the vesting date. Potentially, the Trust may be deemed to be resettled if the Trustees' powers are amended to give them the power to bring forward the Vesting date. However, the pivotal case of *Federal Commissioner of Taxation v Commercial Nominees of Australia Ltd* [2001] HCA 33 is current (although tentative) authority that there is no resettlement as long as the original Trust Deed provides for variation of the Trustees' powers. Because your Trust has no asset this is usually not an issue.

***In-specie* distributions:** As the Trustee of the Trust you have two choices regarding the distribution of the assets of the Trust upon winding it up:

1. Sell the Trust assets as Trustee, then distribute the proceeds and profits to the beneficiaries; or
2. Distribute the assets of the Trust *in-specie* (as they are) directly to the beneficiaries.

If the Trust assets are distributed *in-specie* a range of potential income tax and CGT consequences may apply. In particular, CGT event E5 will apply (under s 104-75 *Income Tax Assessment Act 1997*). This will result in a capital gain accruing to the Trustee if the market value when the asset is distributed is greater than its cost base. Generally, this capital gain will, in turn, have to be apportioned between all Beneficiaries of the Trust.

CGT consequences of Trust vesting: Determining whether or not a CGT event happens on a transfer of an asset from the Trust to the beneficiary requires a close consideration of the effect of vesting as specified in the deed. This will include consideration of the effect of transfer on the nature of beneficial interests in the Trust and the nature of the property held on Trust.

CGT event E1: creation of a new Trust

This can be where a new Trust is created by a declaration or settlement. If CGT event E1 happens and a Trust is created over the assets, the Trustee of the new Trust is taken to acquire each asset when the Trust is created and the first element of each asset's cost base is its market value.

CGT event E5: beneficiary becoming absolutely entitled

The vesting of a Trust may result in the takers on vesting becoming absolutely entitled as against the Trustee to CGT assets of the Trust, depending on what those CGT assets are and the particular interests of the takers on vesting.

The Commissioner's view of when a beneficiary becomes absolutely entitled and when CGT event E5 happens is explained in ATO rulings as to the meaning of the words 'absolutely entitled to a CGT asset as against the Trustee of a Trust' as used in Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*.

CGT event E7

This is where there is an actual distribution of CGT assets to beneficiaries, but it will not

happen to the extent the beneficiaries are already absolutely entitled to the CGT assets as against the Trustee.

Taxation of Trust net income after the vesting date: In the year in which the transfer or vesting occurs, different beneficiaries may be presently entitled to income of the Trust estate derived before, as opposed to after, the vesting date. For example, in the case of a discretionary Trust, a Trustee may, pre-vesting, exercise their discretion to appoint income of the Trust estate derived before the vesting date (pre-vesting income) among those entitled to benefit under the Trust.

By contrast, present entitlement to the income of the Trust estate derived post-transfer (post-transfer income) is held by the vested beneficiaries (usually in proportion to their vested interests in the property of the Trust). This needs to be taken into account in identifying each beneficiary's share of the Trust estate's income for the year which, in turn, determines their share of the net income of the Trust for that year.

The Commissioner accepts an allocation of income of the Trust estate into pre-transfer and post-transfer income of the Trust estate in the year in which vesting occurs that is done on a fair and reasonable basis having regard to all of the relevant circumstances.

Timing of CGT events: For the purposes of most taxation issues, the timing of the relevant events is when a beneficiary becomes 'absolutely entitled' to the distributed asset. This is generally when the beneficiaries receives the right to the Trust asset.

Debts to family and related persons: Your accountant needs to get the Trust's balance sheet to zero. This is before the Vesting Deed can be signed. Often there are loans owing to family members. Your accountant may wish to prepare up a Deed of Debt Forgiveness on our website at:

<https://www.legalconsolidated.com.au/forgive-debt-agreement/>

These documents get rid of all loan and Unpaid Present Entitlement accounts. There is generally no CGT, duty or FBT issues when a debt is forgiven in this way, using our Deed of Debt Forgiveness.

Obviously, if a human or Trust owes money to a company then it is generally under the draconian rules set out in Division 7A of the *Income Tax Assessment Act 1936*. Your accountant can't forgive those debts. Such loans to companies are subject to another set of rules.

Remember: It is necessary for you to work closely with your accountant and advisor to ensure that the distribution of the Trust assets is done in the most tax-effective manner.

What do you need to do to terminate the Trust?

As discussed above, there must be a power granted within the Trust Deed to terminate the Trust.

Provided the Trustees and Appointors have the power to vest the Trust early then the following steps are taken:

1. The capital of the Trust must be distributed in accordance with the Trust Deed (if this has not already been done). That is, the capital can only be distributed to

those beneficiaries that are nominated to receive the capital of the Trust. Alternatively, the Trustee may liquidate the Trust assets first and distribute the proceeds to the Default Beneficiaries. Consult your financial advisor or accountant for specific advice on the practicalities of this process.

We have included a book of sample distribution minutes for your convenience.

2. The Trustee must satisfy any existing **liabilities** of the Trust. This includes any existing or future taxation liabilities that arise as a result of termination of the Trust.
3. A **Vesting Deed** (also known as a Deed of Appointment) must be drafted that expressly details the termination of the Trust. Your Vesting Deed is included with this letter.
4. The **final accounts** of the Trust, including a final tax return, must be prepared. These must be comprehensive enough to satisfy the Australian Taxation Office, State Revenue and any other regulatory body that the Trust has indeed vested. (Note that beneficiaries are ultimately responsible for any duty liability).

Don't forget to get your documents lodged for payment of any Duty

The local State Revenue offices in your State may require that the Vesting Deed (and all copies) be lodged after signing.

I confirm that you have not instructed us to give any duty or taxation advice regarding this matter. We have provided no specific taxation advice. But we are happy to take instructions if so requested.

No tax issues

Your attached winding up documents are drafted so that there are no stamp duty, transfer duty nor Capital Gains Tax.

Stamp Duty and Transfer Duty are State-based taxes. However, in all Australian States and Territories, they do not apply to the attached documents.

Capital Gains Tax is a tax levied by the Federal Government. Again there are no CGT payable on these vesting documents.

However, we confirm that you have not instructed us to provide you with any taxation advice.

Final tax return

If needed, your accountant prepares the final Trust tax return. On the Trust tax return:

1. "Is this your final Trust tax return" - print X in the appropriate box.
2. Attach the **Final Trust tax return** statement (see below) to the tax return and print X in the Yes box at "Have you attached any 'other attachments'?"

As the Trustee is not providing any further tax returns, the Trustee provides a statement on a separate sheet of paper, to the ATO, with the final tax return headed "Final Trust tax return" as such:

Final Trust tax return

1. The reason further tax returns will not be lodged

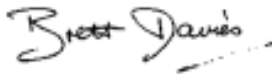
The Ali Family Trust, pursuant to a Deed of Vesting prepared by our solicitors, has vested and wound up the said Trust.

2. The manner of disposal of any assets of the Trust is not disclosed elsewhere on the tax return.

Other than as stated in the attached final Trust return, at the time of signing the above-mentioned Deed of Vesting the Trust had no assets.

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

Yours sincerely,



Adjunct 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*

Vesting Minutes for the Ali Family Trust (**Trust**)

Resolution by the Trustees

Held at On day of20.....

ALI Holdings Pty Ltd ACN 482 894 834
2 Hampden Drive, North Sydney NSW 2060, Australia

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

Notice of Meeting: It was noted that all Trustees received 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.

Person Chairing this meeting: It was resolved that the person signing these minutes be the chairperson (**Person Chairing this meeting**).

(i) Minutes

The minutes of the previous meeting of the Trustee were read and confirmed.

(ii) Exercise of Powers

The Chairperson noted that the resolutions to be passed at this meeting are pursuant to the powers and discretions conferred on the Trustee as Trustee at law and by the Deed of Settlement establishing this Trust.

(iii) Resolution to allocate Trust Capital

The Trustee notes that all income and capital of the Trust has been paid, applied and appointed to or for the benefit of those Beneficiaries as are entitled under the terms of the Ali Family Trust. It is further noted that the Trustee settled any outstanding creditors and Beneficiary's loan accounts as well as all taxes and duties prior to the distribution. The final Balance Sheet was tabled showing that the Trust has no assets or liabilities.

(iv) Certificate of Vesting

The Trustee and Appointor agree and have signed the Certificate of Vesting and will keep a signed copy with these vesting minutes.

(v) Vesting of Trust


The Trustee and Appointor, acting unanimously and in agreement, agree to vest and determine the Ali Family Trust according to the authority granted by the Trust Deed. As of this date the Trust Deed is now fully vested and is now determined.

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 this meeting:

The following holding the position of Appointor consent:

	Signature
Amir Ali 106 Hastings Street North Bondi NSW 2026 Australia	

Build the legal document at <https://www.legalconsolidated.com.au/family-trust-vesting-deed/> – 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)

Vesting Deed for the Ali Family Trust

To wind up and end the Trust

This Vesting Deed is made by:

ALI Holdings Pty Ltd ACN 482 894 834
2 Hampden Drive, North Sydney NSW 2060, Australia

(Trustee)

1 Background

- 1.1 The Ali Family Trust was created by a deed dated 18 September 1999 as settled by the Settlor being Tim Silvio, together with any amending deeds (Trust Deed).
- 1.2 The Trustee has examined the Trust Deed (or sought legal advice) and the Trustee is satisfied that there is power to revoke, add to and vary the terms of the Trusts constituted by the Trust Deed.
- 1.3 The Trustee seeks to vary the Trust Deed from the date of this Vesting Deed and the Appointor/Guardian consents to the variation.
- 1.4 The Trust Deed states that the Trustee has the power to bring forward the vesting date of the Trust.

2 Dictionary

Appointor Amir Ali and persons appointed as Appointor under the Trust Deed from time to time, including all references and other terms used for persons who control the Trustee and can appoint the Trustee and includes such expressions as Appointor, Principal, Guardian, Nominator and Decider

Associate or Associated Entity interpreted in the widest most inclusive sense includes any under section 318 *Tax Act 1936*; Part 8, section 70B *Supervision Act 1993*; sections 10 to 17 *Corporations Act 2001*; and section 820-905 *Tax Act 1997*

Categories a category, character, type, class, part, item or source, including (but not limited to) the categories: Net Capital Gains, Net Capital Losses; gains or losses of capital or of a capital nature treated as assessable income or allowable deductions under the Tax Act for the Trust Income for any Financial Year; profits or any losses of capital or of a capital nature that are not treated as assessable income or allowable deductions for taxation purposes for the Trust Income for any Financial Year; any income, receipts, gains or profits or any losses, disbursements or outgoings of income or on income account that are or are treated as assessable income or allowable deductions for taxation purposes in relation to the Trust Income for any Financial Year; any income, receipts, gains or profits or any losses, disbursements or outgoings of income or on income account whether treated as assessable income or allowable deductions for taxation purposes for any Financial Year; any income, receipts, gains or profits that are exempt or otherwise not liable to tax under the Tax Act or any other act or regulation; Franked Dividends; Unfranked Dividends; any foreign income, foreign income tax credit, other tax credit, interest; any royalties, minors and others with proceeds from deceased estates, superannuation funds and life insurance and additional categories set out in any minutes

Wind up Discretionary Trust you don't want?
Get rid of a Trust.
You have an old Trust.
Your accountant or financial planner suggests that it is more trouble than it is worth.
The Vest Family Trust Deed is simple and straightforward. Just built this Terminate a Discretionary Trust deed.

Plus, categories mentioned in any Australian Taxation Office publication, from time to time;

and

any combination or part of the above

Default Beneficiaries as that term or similar terms such as 'takers in default', 'primary beneficiaries', 'specified beneficiaries' is used or defined in the Trust Deed

Financial Year 1 July in a year to 30 June in the next year or the less than 12 months ending on 30 June after the date of the Trust Deed; and 1 July until the termination of the Trust before 30 June of the next year or otherwise as the Trustee decides (as directed by the Appointor)

Trust Income unless the Trustee otherwise determines from time to time the income of the Trust as defined in section 95(1) *Income Tax Assessment Act 1997* (Cth)

Trust Fund includes the settled sum, additional property, undistributed income, accretions and additions to the Trust Fund from any source and any amount of Trust Income

Tax Act *Income Taxation Assessment Act 1936* (Cth) and *Income Tax Assessment Act 1997* (Cth), as applicable

Trustee the person or persons stated as such in the Trust Deed

Why dissolve a Discretionary Trust?

- The Trust has achieved its original purpose
- It has no assets (if it has debts do a Debt Forgiveness Deed first)
- The controllers of the trust don't want to continue
- The trust has reached its vesting date

3 Vesting Day

- 3.1 The Trustee seeks to vary the Trust Deed from the date of this Vesting Deed or as otherwise stated by minute and there is consent to do so by Amir Ali in the capacity of Appointor.
- 3.2 The Trustee has produced a Balance Sheet showing that the Trust no longer has any assets or liabilities and, as such, the Trustee has resolved that the vesting date is to be brought forward to the date on which the attached Final Trust Minute is signed.
- 3.3 The terms and conditions of the Trust Deed are amended to allow the vesting of the Trust irrespective of the vesting date. Anything to the contrary in the Trust Deed is to be read down so to give full operative power and effect to this clause.

4 Failure to distribute Trust Income or capital

- 4.1 Where the Trustee fails to distribute any:
 - 4.1.1 Trust Income by 30 June in a Financial Year; or
 - 4.1.2 unapplied and undistributed income before the Vesting Daythen such income and capital are held by the Trustee in Trust for the Default Beneficiaries who are alive. If more than one, then equally as tenants in common. If they are all dead then such income and capital is held for the next of kin of the Default Beneficiaries equally as tenants in common.

5 Trustee Powers

- 5.1 Only exercisable with the Appointor's prior approval or direction, but otherwise, with absolute discretion, the Trustee has all the maximum possible powers of both a natural person and of a Trustee, as though the Trustee was both the legal and beneficial owner of the Trust Fund, including dealing as Principal, Agent or otherwise, as such power includes:

Change Beneficiaries

- 5.2 add, remove, redefine, exclude and change Beneficiaries, Default Beneficiaries and classes of Beneficiaries
- 5.3 receive a request from a Beneficiary for that Beneficiary to be removed as such, and either accept or reject such requests under any terms the Trustee deems fit to apply

Distribute

- 5.4 distribute any part of the Trust Income in any Financial Year, to any Beneficiary in the proportion and to exclude a Beneficiary
- 5.5 distribute any part of the Trust Fund for a Beneficiary's maintenance, education, advancement or benefit of that Beneficiary in any manner
- 5.6 distribute to a Beneficiary's parent, guardian or legal person without being responsible for what that person does with the distribution
- 5.7 not be responsible for what is done with any distribution
- 5.8 make an *in specie* distribution
- 5.9 redefine the definition of Trust Income before or after 31 December
- 5.10 accumulate Trust Income and treat it as Trust fund capital
- 5.11 at any time before 30 June in a Financial Year, decide what proportion of the Trust Income for that year is to be made solely from income of a particular class of income
- 5.12 decide, when a Beneficiary becomes entitled, the income of that entitlement
- 5.13 distinguish between income of a particular nature or character or from a particular source (whether referred to in the Tax Act or not) and deal with income of a particular nature or from a particular source in one manner and income of any other nature or character or from any other source in a different manner and classify and create a separate account for any type of income including into any categories
- 5.14 distribute an amount to a Beneficiary by setting the amount aside in a separate account in the books in the name of the Beneficiary and that amount may be held on a separate Trust for such Beneficiary if so determined by the Trustee, as an amount owed to the Beneficiary as an interest free debt at call to determine that the Trust Income for a Financial Year, whether, and to what extent, a receipt or outgoing is on account of income or capital or to hold the money as an unpaid present entitlement

How do terminate Family Trust?

1. Distribute any capital that is left
2. Build a [Debt Forgiveness Deed](#) to forgive loans and Unpaid Present Entitlements owed to beneficiaries
3. Prepare any outstanding tax returns
4. Build and sign the Windup Family Trust Deed and the minutes

- 5.15 separately allocate all or part of the Trust Income or capital whether distributed or accumulated

Vary the Trust Deed

- 5.16 vary the Trust Deed and this Vesting Deed at any time, in any way, including revoking all the Trusts it establishes and changing vesting dates, however, such amendments do not benefit the Settlor or affect a Beneficiary's beneficial entitlement already set aside

Jurisdiction

- 5.17 declare the law of the jurisdiction that governs the Trust Deed, from time to time, and while no declaration is made in the Ali Family Trust then the Settlor's State as it appears in the Settlor's address in the Trust Deed

Terminate Trust Deed earlier than the Vesting Day

- 5.18 terminate the Trust Deed before the Vesting Day

Dealings with the Trust Fund

- 5.19 invest in anything, whether or not authorised by the law for investment of Trust Funds including; life, life endowment, term, trauma or other policy, Trusts and common funds, deposits and loans (with or without security), hire purchase, bill of sale, real and personal property (whether income earning or otherwise and whether wasting or not), shares (unlisted or listed on any stock market), stocks, notes, options, debentures and other securities, options, hedging contracts, derivatives, interest rate swaps, interest rate swaps to hedge interest rate exposure, futures contracts, hedging, currency exchanges, foreign currency transactions, warrants and other financial instruments

- 5.19.1 advance or lend money to any person, with or without security, on any commercial or non-commercial terms and at any rate of interest including a zero interest rate

- 5.19.2 borrow and raise money from any person, on a full or part basis, with or without security, mortgage or charge, in overdraft

- 5.19.3 provide any guarantee or indemnity for payment of money or performance of any person's contractual obligations

- 5.19.4 mortgage, lien, pledge, charge, guarantee or otherwise provide security for the Trust Fund for security for any borrowing, raising, facility, indemnity, lease or other contractual obligation, whether or not the contractual obligations relate to the Trust or not and the Trust Fund is fully indemnified from the Trust Fund

- 5.19.5 give and execute any mortgage, charge or other security over any part or parts of the assets of the Trust Fund as may be required to secure the payment or the performance of any contractual obligation under or in connection with any transaction

End my Family Trust via a 'minute'?

A 'minute' is a record of something you have done. It is just recording an event. In contrast, a Deed of Variation to vest your Trust is the actual document which vests and winds up your Trust.

- 5.19.6 deposit securities or documents of title to any real property and chattels with a bank, Trust, company, investment broker or like institution in any part of the world
- 5.19.7 purchase, acquire, sell, transfer, hire, lease, dispose of, manage, divide, encumber or otherwise deal with any chose in action, real or personal property and any Trust Fund
- 5.19.8 enter into any contract, arrangement or agreement with any person (including a Beneficiary or Trustee) for the sale, letting or other dealing with the Trust Fund, or to provide any goods or services by or from that person or Beneficiary
- 5.19.9 pay any person (including a Beneficiary and Trustee) for administering the Trust Fund and including paying such persons their usual rate if they are providing professional services
- 5.19.10 pay out of the Trust Fund any outgoings, costs, charges, taxes, duties and expenses of the Trust whether related to the Trust or not, and allocate such to any income or capital categories
- 5.19.11 exercise all rights and perform all duties of holding shares, stock or debentures in any company
- 5.19.12 establish, purchase, acquire, promote or conduct any business, undertaking or scheme, either in the Trust capacity or in its capacity as Trustee (or both), and enter into any contract, arrangement or agreement with any person and to sell, transfer, dispose of or otherwise deal with any company, business, undertaking or scheme
- 5.19.13 employ any person (including a Beneficiary or Trustee) to carry on any business or to do anything (whether in connection with the Trust or otherwise) under this deed, or otherwise), for remuneration or otherwise
- 5.19.14 appropriate, wholly or partly, any asset of Trust Fund or any interest a person may have in the Trust Fund or any other interest determined to be paid to or apply for the benefit of a person
- 5.19.15 open and operate bank accounts, to draw, make, accept, discount, execute, issue or otherwise deal with all forms of negotiable or transferable instruments and to enter into any banking facilities or other form of banking facilities
- 5.19.16 give receipts, including for money received
- 5.19.17 underwrite shares, securities or other obligations
- 5.19.18 grant options (including put and call) including for any of the Trust Fund
- 5.19.19 become a director, or appoint any person as a director, of any company and be independently paid for such a position
- 5.19.20 receive any chose in action, real or personal property by gift or by will as additions to the Trust Fund
- 5.19.21 grant, cancel or redeem an annuity
- 5.19.22 divide the assets in their own particular form, without first realising those assets, between the Trust Fund and any other Trusts established
- 5.19.23 take any action to protect the Trust Fund

The Discretionary Trust Deed started the trust. The way to terminate the Trust is to do another Deed. A minute is not good enough. It is not best practice and your accountant would not be prepared to take the risk of just using a 'minute'. A 'minute' does not satisfy the ATO or other government departments.

- 5.19.24 enter into, manage and vary any arrangement relating to currency exchange, interest rates, interest rate caps, collars, floors or swaps, any currency forward rate agreement and any other financial risk management agreement, derivative and hedge
 - 5.19.25 mix the Trust Fund with any other money, funds or property, including other Trusts' money, funds or property and join with any other person or the Trustee in its personal capacity or as Trustee of any other Trust fund or both of them in making common investments
 - 5.19.26 make any election required or permitted at law
 - 5.19.27 appoint attorneys and managers and delegate the exercise of all or any of the powers or discretionary authorities
 - 5.19.28 register the Trust Fund in the name of a nominee and not be concerned that a Trust Fund is not registered in the Trust
 - 5.19.29 grant a power of attorney for fee, remuneration and reward on the terms
 - 5.19.30 take or not take legal proceedings against a co-Trustee in respect of an alleged breach of Trust
 - 5.19.31 for the Trustee to receive remuneration in any form including salary, commission or other remuneration, payable out of the Trust Fund's capital or income
 - 5.19.32 if the Trustee is engaged in a profession or business, set out the rates for any work done by the Trustee in their capacity as a professional, partner or employee of the Trustee
 - 5.19.33 add additional powers by way of minutes (provided that they are only then exercisable with the Appointor's prior approval or direction)
- 5.20 even though and irrespective of the fact that the Trustee or a director, member, associate, Beneficiary or relative of the Trustee has or may have a direct or indirect interest in the method or result of exercising the power or discretion, or may benefit directly or indirectly from its exercise;
- 5.21 notwithstanding anything to the contrary, the Trustee may enter into any relationship (legal or otherwise) irrespective of whether there is a direct or personal interest, with any person, including related parties (even if the Trustee is a sole Trustee) to do all things (including all things set out in this clause) in such manner, and on any terms (favourable, unfavourable or otherwise), whether there is a conflict or not, as the Trustee thinks fit; and
- 5.22 all such powers can be exercised orally, in writing, by action or by any other means.

Provided you follow the procedures set out in our covering letter (which comes with the Deed of Variation) there are no Capital Gains Tax issues. There is also no ad valorem stamp (transfer) duty in any Australian State or Territory.

6 Powers augment the Trust Deed powers

- 6.1 The above Trustee powers are in augmentation and do not reduce the Trustee's powers set out in the Trust Deed.

7 Trustee

- 7.1 The Appointor may replace, add, remove and appoint a Trustee at any time without justification or reason, verbally, in writing, by deed, by minute, by will or any other method, with or without any notification to any outgoing Trustee with no requirement to provide indemnities or similar to any outgoing Trustee.
- 7.2 Each Trustee irrevocably appoints and provides a non-renounceable power of attorney, even if dead or no longer in existence;
- 7.2.1 power of attorney, even if dead or no longer in existence;
- 7.2.2 permission and right to sign and execute any documents, deeds or any matters to allow the removal of the Trustee or any other similar matters which the Appointor desires.
- 7.3 A Trustee may resign as Trustee. However, unless there is a remaining Trustee, or the Appointor deems otherwise, the resignation is effective only if a new Trustee is appointed.
- 7.4 The Trustee's appointment automatically terminates if the Trustee is of unsound mind, becomes bankrupt, is wound up or makes an arrangement, composition with creditors or suffers an Insolvency Event.
- 7.5 Upon ceasing to be a Trustee, the Trustee hands back books, accounts, titles and transfers of ownership.
- 7.6 No person dealing with the Trustee need be concerned to inquire into the adequacy of the powers of the Trustee for any dealing or the exercise by the Trustee of any of the Trustee's powers, authorities and discretions.
- 7.7 No security given is invalid because of an error or omission whether of law or fact on the part of the Trustee or its legal adviser or any breach of duty or Trust whatsoever.

Before you wind up your Family Trust the balance sheet must show zero. No assets and no liabilities of the family trust you are about to get rid of.

8 Beneficiaries

- 8.1 No Beneficiary has any interest, claim, right, estate or title in any part of the Trust Fund, Trust Income or any of its income.
- 8.2 Neither a Beneficiary nor any other person may challenge an exercise of a power or a failure to exercise it, or require a reason for its exercise or non-exercise.
- 8.3 No person, including a Beneficiary, may require, and the Trustee is not obliged to give, any account, report or information on the Trust Fund including any entitlement of any Beneficiary, except as required by law.
- 8.4 The Trustee is not liable to the Beneficiaries for any loss.
- 8.5 No Beneficiary is under any obligation to personally indemnify the Trustee or a creditor of the Trust or any sub-Trust established under this deed for any liability, loss, damage or expense either incurred or suffered in connection with the Trust. The Trustee is unable to exercise against a beneficiary any right by way of subrogation or indemnity.

9 No Partnership

- 9.1 The Trust Deed does not create the relationship of partners, or of principal and agent, between the Trustee and the Beneficiaries nor as between each other.

10 Severing to reduce tax and stamp duty

- 10.1 The Trust Deed and this Vesting Deed is interpreted to reduce duties and stamp duty (including State and federal) (Taxes) and illegality. If any clause nonetheless fails to reduce Taxes or is severed, read down or fettered, as required, from the Trust Deed to the extent of the illegality or in the furtherance of the Taxes.
- 10.2 The Trust Deed and this Vesting Deed is read down so that no taxation law or taxes, from time to time, is contravened that would result in an unfavourable taxation position.
- 10.3 For land ownership registration requirements, including where there is a change of Trustee then all powers in the Trust Deed and this Vesting Deed are severed, read down or fettered, as required, and vesting requirements are required to allow for minimal duty or stamp duty in the relevant

However often there are Unpaid Present Entitlements (UPEs) on the Family Trust balance sheet. A UPE is created when your Family Trust distributes income to a beneficiary. The beneficiary rarely sees the money. Instead, the beneficiary merely 'lends' the money back to the Family Trust.

11 What isn't varied?

- 11.1 All the other terms contained and implied in the Trust Deed remain in full force and effect.

12 Do we use the definitions in the Trust Deed?

- 12.1 Unless the context otherwise requires, the expressions and expressions of similar import contained in this Vesting Deed have the same meaning as in the Trust Deed. This Vesting Deed does not alter the rights or entitlements of any classes of the Beneficiaries.

Build and sign a [Deed of Debt Forgiveness](#) to get rid of Family Trust UPEs.

13 Vesting Deed versus the Trust Deed

- 13.1 This Vesting Deed is supplemental to the Trust Deed within the meaning of the applicable Property Law Act. If any of the terms of the Trust Deed are inconsistent with the terms of this Vesting Deed, then the terms of this Vesting Deed prevail.

HOWEVER, this Vesting Deed in no way constitutes a resettlement of the Trust Deed or any part of the Trust Fund. If anything in this Vesting Deed would otherwise establish a resettlement of the Ali Family Trust then the applicable words are read down so as not to constitute a resettlement.

14 When does this Vesting Deed take effect?

- 14.1 Unless otherwise stated in any minutes, this Vesting Deed takes effect on the date of this Vesting Deed.

15 Decision making in more than one place and Notices

- 15.1 This Vesting Deed may be executed in different locations by signing identical documents and all counterparts together constitute the Vesting Deed.
- 15.2 Meetings and decision making can be conducted in more than one place via telephone, the Internet or other means.
- 15.3 Notices may be provided via the post or email.

16 Interpreting the Vesting Deed

- 16.1 In this Vesting Deed unless the context indicates a contrary intention:
- 16.1.1 headings are for convenience only and do not affect interpretation
- 16.1.2 a reference to a 'person' includes a reference to: individual; body corporate (wherever incorporated); body politic; as well as persons (whether incorporated or unincorporated) acting in that person in the capacity as a Trustee; person in the capacity as Personal Representative of a deceased estate and person in the capacity as a trustee of a trust or fund
- 16.1.3 the plural includes the singular and vice versa and the masculine gender includes every other gender
- 16.1.4 a reference to the Vesting Deed includes a reference to any amendment, novation, variation, supplemental deed or replacement from time to time
- 16.1.5 a reference to any party to this Vesting Deed includes successors or permitted assigns
- 16.1.6 a reference to laws in this Vesting Deed refers to those laws as amended or replaced as consistent with the overall purpose of the Vesting Deed and does not lead to an anomaly
- 16.1.7 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

Taxation Ruling TR 2018/6 sets out the views on the income tax consequences of a trust vesting. Our deed complies with the ruling. A trust's 'vesting' or 'termination' date is the day on which the beneficiaries' interests in the property of the trust become 'vested in interest and possession'.

Executed as a Deed on the day of 20

EXECUTED for and on behalf of
ALI Holdings Pty Ltd
ACN 482 894 834

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)

The following holding the position of Appointor consent:

SIGNED, SEALED AND DELIVERED by
Amir Ali

Amir Ali

(Signature of witness)

(Name of witness)

Checklist for Winding up the Ali Family Trust

You may want to use the checklist below to confirm that you have done everything required to vest your Trust.

It is presumed that you have already distributed all property and assets of the Trust.

Trust Wind-Up Checklist	Done (tick box)
1. All Trust property has been vested according to the Trust Deed (only those beneficiaries that are eligible to receive capital have received capital).	
2. Taxation obligations (in particular, CGT and income tax) have been taken into account.	
3. Trust liabilities have been discharged.	
Upon 1, 2 and 3 being completed	
4. Trustees have met and resolved to wind up the Trust.	
5. Deed of Vesting has been signed by Trustees and Appointors and witnessed.	
6. Certificate of Vesting signed.	<input type="checkbox"/>

Stamp Duty and Transfer Duty are State-based taxes. However, in all Australian States and Territories, they do not apply to the closing of a family trust prepared by Legal Consolidated Barristers & Solicitors. Your documents to close a family trust are drafted so that there are no stamp duty, transfer duty nor Capital Gains Tax.



LEGAL
CONSOLIDATED
BARRISTERS & SOLICITORS

CERTIFICATE
of
VESTING
for the Ali Family Trust

By this deed and according to the applicable laws of the relevant jurisdictions, the Ali Family Trust vests absolutely. This certificate serves as a receipt and discharge of all liabilities and obligations of the Trustees and officials of the Ali Family Trust.

Trustee(s)

Appointor(s)

Date _____

Date _____

You can build this document here:

<https://www.legalconsolidated.com.au/family-trust-vesting-deed/>