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Cost of losing a deed

This article appeared in this month's edition of the Law Society Journal (NSW).

Phil and Sarah, Tom and Jane come to see you about their business structure and buying an investment property. The two couples are friends and have purchased a number of investment properties together over the years.

The properties are all jointly owned by Phil and Sarah's family trust and Tom and Jane's family trust as tenants-in-common. Phil and Sarah are the trustees of their family trust and Tom and Jane are the trustees of theirs.

The couples recently attended an investment seminar at which the speaker has suggested it is much better to have corporate trustees of family trusts if the human trustees are partners in a partnership operating a business.

Both couples operate their businesses through family partnerships and as they are looking at buying another property and reorganising their finance they have decided that now is a good time to make the change from human trustees to company trustees.

You tell them that all they need to do is incorporate the new trustee companies, appoint one company as trustee of each of the two family trusts and transfer the existing properties into the new corporate trustees names. No tax will be payable on the change of trustee and only nominal duty of \$50 will be payable on the land transfers from the human trustees to the new corporate trustees.

You prepare the necessary documents, have everything signed and send it off to the Office of State Revenue for stamping.

The sting

The Office of State Revenue requests a copy of each of the original stamped trust deeds.

Phil and Sarah send you a copy of their deed the next day. However, Tom and Jane inform you that they have not been able to find a copy of the trust deed for a number of years and have checked everywhere they can think of. As the trust was created a number of years ago, they are also unable to find any evidence confirming stamp duty has been paid.

Unless Tom and Jane are able to locate a copy of the stamped and signed deed for their trust or, at the very least, evidence that the deed was signed and stamped, they will have to pay stamp duty on value of the dutiable property owned by the trust, being half of the encumbered value of all of the investment properties.

Avoiding the sting

If the original trust deed had been registered with the Department of Lands after it was signed and stamped, a copy of it could have been obtained from Land and Property Information which would be as good as the original and would have avoided the problem.

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Alternatively, if a copy of the original deed had been stamped as a duplicate along with the original deed, the likelihood of both stamped deeds being lost would be significantly lower.

The cost of registering an original trust deed generally pales into insignificance when compared to cost associated with a lost trust deed.

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