

enews january 2012

CHANGING TRUSTEES

We have had a considerable response to our discretionary trust review package sent out in our enews last July after the High Court decision in Bamford. See the attached copy for your information if you missed it last time.

We have found from reviewing a large number of deeds that more care must be taken when changing trustees of trusts. The deed must be drafted carefully in accordance with the terms of the principal deed and in order to avoid stamp duty must provide that the new trustee cannot become a beneficiary of the trust.

If there is a change of trustee to a trust there is nominal \$50 stamp duty on any dutiable property transferred from the old trustee to the new trustee ~ s.54(3) Duties Act 1997. However, to get the concession, the new trustee, must not be a beneficiary now or ever.

We also recommend that change of trustee deeds are registered unless the trust deed specifically excludes the requirements of s.6(1) of the Trustee Act 1925. This is our view after the decision of Young J in Retravision (NSW) Ltd v Copeland which, in effect, says that unless a deed is registered the change of trustee is not effective.

Finally, it is important to remember that changing the trustee of a trust can impact on client's estate planning. Particularly if the trust is a trading trust. This can occur if, for example, a client's will leaves the shares in the trustee company of a trading trust to one of their children, so that that child can continue to control and operate the Trust's business, and leaves the residue of their estate to their other children who are not involved in the business. If the trustee of the trading trust is changed to a new company for some reason and the client's will is not updated the consequence would be that the child does not inherit control of the business as intended, rather, the shares in the new trustee company and with them the power to control the trust's business, form part of residue of the client's estate and pass to the children not involved in the business.

Please do not hesitate to contact us if you have any deeds requiring review or any other information about the above.

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