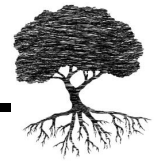


# Dangers of Cheap Trust Documentation

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Below is an excerpt from a recent post by Matthew Burgess of View Legal, a nationally recognized legal consultant specialising in tax, corporate and trust structures and asset protection. It demonstrates the dangers of the use of boilerplate documentation by ‘document factories’ without adequate regard for the circumstances, and particularly a client’s requirements. In this case a standardised document was rendered useless from the outset by conflicting terms....the trust deed named a single primary beneficiary, who was also named as the trustee, but the trust deed also provided that no beneficiary could receive a distribution whilst he/she acted as trustee. As a result the distributions made to the beneficiary over a period of years were invalid. Contemplate the commercial and tax consequences of that!

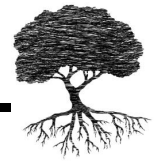
*“The trust instrument stated that in relation to the definition of primary beneficiary, in no circumstances could a primary beneficiary receive distributions, if at any time the person was a trustee.*

*So from day one, the provisions of the deed had meant that Mr Y was never in fact a potential beneficiary of the trust and yet he had received significant distributions over an extended period of time. A fundamental issue triggered simply because no one had actually read the trust deed.*

*Interestingly, this type of exclusion of beneficiary class is in virtually every trust instrument from a New South Wales trust deed provider. More problematically, this type of provision is actually used by countless other deed providers as well, whether they're based in New South Wales exclusively or whether they in fact are based in other parts of the country.”*

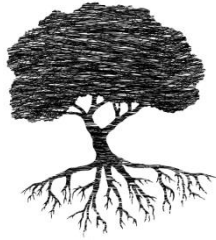
Many accountants, acting in good faith, have trust documentation prepared (discretionary trusts, unit trusts, self-managed superannuation fund trust deeds) at extremely modest cost by document providers, hoping to save their clients some money in the establishment of new structures. The reality is that for a saving of a few hundred dollars, the client is exposed to the risk of a catastrophic outcome like that described in Matthew’s post above.

Those services are available locally, at reasonable cost. Yes, it will cost more for us to settle a trust than it would for a “mail-order” type service, often from another State. However it is a little like cutting corners with property searches to save \$200 on a multi-million dollar transaction. We maintain an ongoing consultancy with View Legal in order to ensure that documentation produced for clients is current; and also to maintain a watching brief over existing trust structures in order that they may be updated as changes to the law require from time to time.



I am happy to discuss your particular requirements and those of your clients, and of course cost, so please don't hesitate to call when considering structuring requirements for your business, or for your clients.

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