Does your family trust have a succession plan?

If not (or if you don't know), read on

Coastal *Law Group*

WELCOME

Hi there!

Many Australians establish family trusts (also known as discretionary trusts) to protect and manage wealth for the benefit of their loved ones. Many Australians don't, however, realise that a family trust does not automatically pass in accordance with their Will.

Without careful planning, control of a family trust may pass to someone who does not align with your intentions, potentially creating uncertainty or conflict for future generations.

We're here to help make planning for the future simple.

This guide explains what succession planning for a family trust involves, why it is an important part of a comprehensive estate plan, and the steps you can take to help ensure your family's wealth continues to be managed in accordance with your wishes.

Putting a succession plan in place for your family trust doesn't have to be complicated. If you have a family trust and want to ensure that you have a say in who will control it in the future, our team is here to provide guidance tailored to your circumstances.

Coastal Law Group

Disclaimer: This guide is not legal advice and is not to be relied on as legal advice. This guide contains information of a general nature only. Ensure you obtain appropriate legal and taxation advice before making a succession plan for your family trust.

Yes, we're a law firm—but not the kind you might expect.

At Coastal Law Group, we've created a welcoming space where people feel comfortable asking questions and planning for the future.

We believe decisions about your family's wealth, business structures, and succession planning shouldn't be intimidating or overwhelming.

A family trust is often established to protect and preserve wealth for future generations, but without careful succession planning, the future management and control of that trust may not reflect your intentions. Everyone deserves clear, practical legal advice and the peace of mind that comes with knowing their family's affairs are properly planned.

Our team is here to help you put the right arrangements in place to support the smooth transition and ongoing management of your family trust.

TOPIC ONE:
FAMILY TRUST REFRESHER

This topic provides a refresher on what a family trust is and how it works

Note! In this guide, we will refer to a family trust (which is also known as a discretionary trust) simply as a 'trust'.

01 A trust works by separating control of the assets held in the trust from the right to benefit from those assets.

02 Like grains of sand, all trusts are unique. How your trust works depends on the terms set out in the trust deed for the trust. You can think of the trust deed as the 'rule book' for your trust.

03 **What are the benefits of having a trust?**

The primary benefit of trusts is that they offer greater protection to the assets held within them.

As the beneficiaries personally own the assets of the trust and their only right in relation to the assets is for the trustee to 'consider' making distributions to them, it is more difficult for someone to argue that the assets held within a trust belong to any of the beneficiaries.

This means that if a beneficiary is sued, then it is unlikely that the assets held within the trust will be available to satisfy any claims by creditors against that beneficiary.

04 In a trust, there are three key roles. being the trustee, the appointor (also sometimes referred to as the principal), and the beneficiaries.

05 **What is a trustee?**

A trustee is the person (or company) that has legal ownerhip and control of the assets held within a trust.

The trustee is the legal owner of the assets of the trust and is responsible for the day-to-day management and due administration of the trust.

06 **What is an appointor (or principal)?**

Your trust may have an appointor (or principal). This role is optional, however, most modern trust deeds will appoint an individual (or individuals) to this role.

The appointor (or principal) typically has the power to:

- remove the trustee; and/or
- consent to the exercise of certain powers by the trustee.

Ultimately, the power of the appointor is governed by the trust deed for your trust.

07 **Who are the beneficiaries?**

There should always be a number of people who can benefit from the assets within the trust and these people are known as the beneficiaries.

The nature of a trust is that the beneficiaries do not have a right to the assets within the trust. Instead, each beneficiary's entitlement to the assets within the trust is at the complete discretion of the trustee, subject to the powers and obligations contained in the trust's deed.

The trustee is, however, required to give real and genuine consideration to the needs and circumstances of each beneficiary when deciding whether or not to make a distribution from the trust to a beneficiary.

A trustee can also be one of the beneficiaries of the trust, provided that the trust deed permits it. Where the trustee is also a beneficiary of a trust, then the trust assets held within the trust will 'look and feel' more like that person's assets, as they will have control and can choose benefit from the trusts assets.

It's important to remember that the exact entitlements of a beneficiary will be set out in the trust deed for the trust, as there can (and often is!) different categories of beneficiaries.

Explanatory Diagram

Trust

Appointor/Principal

Has ultimate control over the trust, as they can appoint and remove the trustee.

Trustee

Legally owns and manages the trust for the benefit of the beneficiaries.

Beneficiaries

Receive the benefit of the trust assets in accordance with the terms of the trust's deed and at the discretion of the trustee.

Trust Deed

Sets out the rules governing how the trust operates, who is entitled to benefit, and who controls the trust.

TOPIC TWO:
SHOULD MY TRUST HAVE A CORPORATE TRUSTEE

This topic explores why you may appoint a company as the trustee of your trust

01 Typically, you can choose whether you act personally as the trustee of your trust or if you appoint a company to act as the trustee (commonly referred to as a corporate trustee).

02 **Why would I appoint a corporate trustee, instead of just being the trustee myself?**

Appointing a corporate trustee can have its advantages, such as:

- Allows the corporate trustee to continue as the trustee even after you have died, which can ease the administrative burden once you have died.
- Can make changing who is able to take care of the day-to-day management of the trust simpler, as this can be achieved by simply changing the directors of the corporate trustee.
- Clearer evidence of control, as typically the trustee changes less where a corporate trustee is appointed (as noted above, change in effective control can be achieved by changing the directors).
- Can provide a simpler mechanism for use in planning for the succession of the trust.

TOPIC THREE:
WHAT HAPPENS TO MY TRUST WHEN I DIE?

This topic explores what happens to a trust when an individual in a 'control' position dies

01 Making sure the wealth in your trust ends up under the control of the right people after you die is incredibly important.

02 Many people assume that the assets within a trust are automatically gifted to their loved ones under their Will (if they have one!), but this is not the case.

03 A trust is a legal relationship under which a trustee holds property for the benefit of others. This means that you do not own the assets held within a trust personally. As a Will can only deal with your personal assets, you can't use a Will to gift the assets held in a trust.

04 A trust will continue to exist after you, or any other beneficiaries die. The assets will continue to be held by the trust and owned and controlled by the trustee.

05 When a person holds a control position within a trust (i.e. where they are the trustee or appointor/principal) and they die, their control position becomes vacant. How that control position is filled is determined by the trust's deed and any succession plan that is in place.

Coastal Tip!

Appointing a replacement for a control position in a trust is an incredibly important part of planning for the succession of your trust.

Whilst planning to fill the role of trustee is important, planning to fill the role of appointor/principal is vital.

The person (or persons) who fill the role of appointor/principal will have ultimate control of the trust. Remember, this means they can replace the trustee!

So if you only implement a plan to replace the trustee, all of your planning can be undone by the person (or persons) who become the appointor/principal of the trust.

If you don't appoint a replacement appointor/principal, the trust's deed will typically determine who will fill this role (and it may be filled by someone you wouldn't have chosen!)

TOPIC FOUR:
IMPLEMENTING A SUCCESSION PLAN

This topic outlines available succession planning options for your trust

01 There are a number of ways to deal with the succession of your trust, each with their pros and cons.

02 **Option 1: Succession plan included in the trust's deed**

The trust deed may already name a specific individual to take over the relevant control positions in the trust.

The trust deed may specify that your legal personal representative (being your executor or administrator) is to take over the control positions in the trust.

03 **Option 2: Deed of nomination**

The trust deed may permit the appointor/principal to nominate a successor using a Deed of Nomination.

This option is often the preferred method for appointing a successor appointor/principal, as it allows flexibility in nominating further backups to fill this role, where your initial nomination is unable to fill the role due to incapacity or death.

04

Option 3: Nomination of a successor in your Will
The trust deed may allow you to nominate a successor in your Will.

Whilst this is certainly an option, it is not recommended for the following reasons:

- Often this option does not effectively plan for multiple contingency events, so may not achieve your desired outcome.
- In the event that you change your mind about your nominations, you would need to redo your Will each and every time you change your mind. This can be much more complex than simply having an updated Deed of Nomination prepared.
- Where you nominate successor/s in your Will, the Will becomes a crucial document for the operation of your trust, as it evidences the appointment of your successor/s. This means that third parties (such as banks) may demand to see your Will.

05

Important! Making a plan for when you die is a great start, but don't forget to plan for your incapacity. Failing to plan for your incapacity can have a significant impact on the operation of your trust.

06

How do I plan for my incapacity?
Where you are an individual trustee, it is imperative that you have a properly prepared Enduring Power of Attorney in place, as it is the person (or persons) you have nominated as your financial attorney that can have the power to act as trustee in the event that you lose capacity (depending on the trust's deed and applicable law).

If your trust has appointed a company to act as trustee, then it is important to have a properly prepared company power of attorney in place. A company power of attorney can provide authority to a person (or persons) to act on behalf of the company, where the director (or directors) are unable to act due to loss of capacity (and in other specified circumstances).

Succession Option	Flexibility	Ease of Updating	Recommended
Terms of Trust Deed	Moderate	Difficult	Sometimes
Deed of Nomination	High	Easy	Usually
Will	Low	Moderate	No

TOPIC FIVE: COMMON MISTAKES

This topic highlights some common mistakes that people make with succession planning for their trust

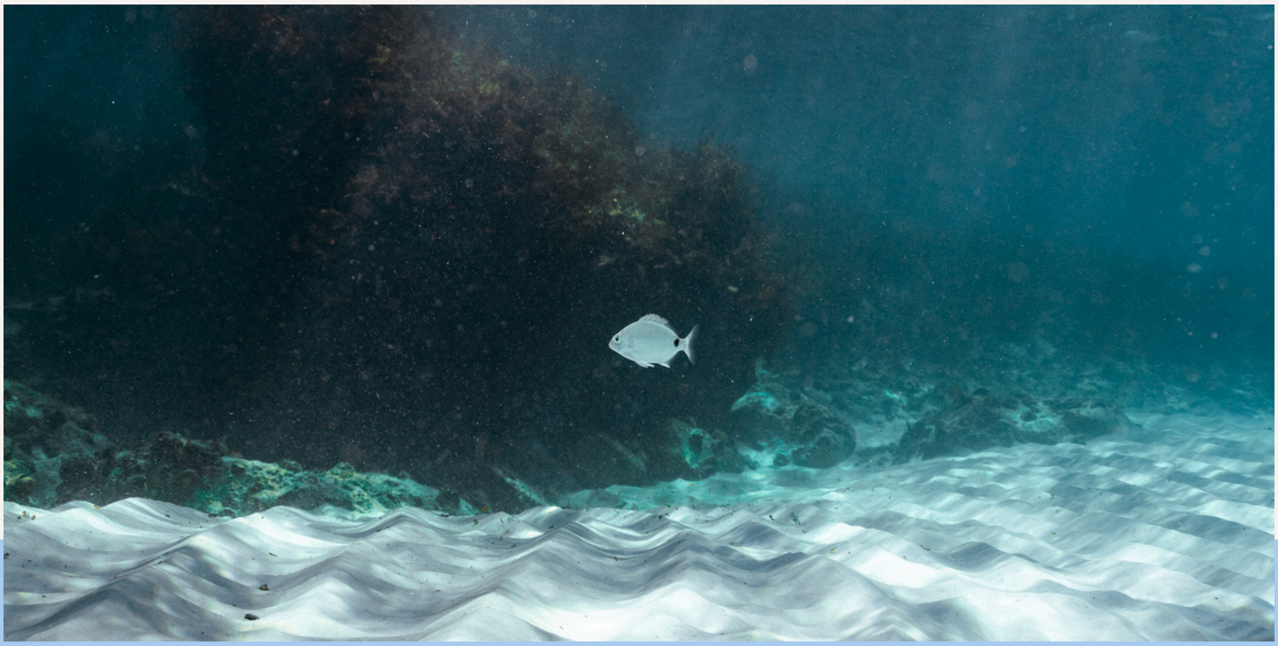
01 **Assuming your Will controls succession of your trust**
As outlined above, your Will is not the best option for dealing with the succession of your trust.

02 **Never reviewing the trust deed**
Failing to review your trust deed could result in your succession plan being invalid, especially where the trust deed contains provisions dealing with the automatic succession of your trust or specific formalities that must be complied with for a nomination of a successor to be valid.

03 **Failing to plan for incapacity**
Planning for your death is a great start, but many people forget to plan for their incapacity. Remember, loss of capacity can occur due to illness or injury. It's not always as a result of suffering from dementia, as most people commonly assume.

04 **Appointing only one successor**
Appointing only one person to succeed you as a controller of a trust is a common mistake. Life is unpredictable, and a well-considered succession plan should account for the possibility that your first choice may be unable to act when needed, which may be because they died before you or do not have the required capacity.

HOW WE CAN HELP



01 **Reviewing your existing trust deed and succession arrangements**
We can review your existing trust deed and any succession arrangements you have already implemented, to ensure they are comprehensive and do not leave your family trust exposed.

02 **Advising on the most appropriate succession strategy**
Every trust is unique, and so is the family they relate to. This is why a succession plan should factor in yours and your family's circumstances. An effective succession plan for a trust is not one-size-fits-all. We take the time to understand you, your family dynamics, and your intentions and then create an appropriate and effective succession plan.

03 **Preparing or updating legal documents**
For a succession plan to work, the right legal documents need to be created and validly signed. We can prepare or update the legal documents required to record and implement your succession plan.

04 **Preparing a comprehensive estate plan**
Whilst having a succession plan for your trust is important, it is just as important to ensure that your personal estate plan not only exists, but works with your trust succession plan. We can ensure that your estate plan is comprehensive and cohesive, so there is no confusion or added complexity for your family when you die or if you lose capacity.

05 **Work alongside your accountant and financial adviser**
We can work with your accountant and financial adviser to ensure the succession plan for your trust and your personal estate plan is practical, effective, and tax conscious.

HAVE QUESTIONS?

Get in touch with us, we'd love to help!

07 5646 6292
connect@coastallawgroup.com.au
coastallawgroup.com.au
107/137 Laver Drive Robina Qld 4226

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