Discretionary Trust Letter of Wishes

Setting up a discretionary trust involves careful consideration, and drafting a Letter of Wishes is a crucial aspect of this process. The trustees, who are granted discretion in benefit distribution, can greatly benefit from understanding the preferences of the settlor(s), the individual(s) establishing the trust.

Creating a well-considered Letter of Wishes ensures that trustees have valuable insights into the settlor's intentions, fostering effective and informed decision-making in trust administration.

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Seven Key Considerations

Whether integrated into estate planning or as part of an investment strategy, here are seven key considerations when creating a Letter of Wishes.

1. Information Beyond the Trust Deed

- **Objective:** Clearly articulate the settlor(s)' desires regarding the management of trust assets by the appointed trustees.
- **Importance:** Provides guidance on discretionary decisions, especially when trustees may not have complete information on beneficiaries' personal circumstances.

2. Confidentiality

- **Legal Standing:** Case law establishes the confidentiality of the Letter of Wishes between settlor(s) and trustee(s).
- **Disclosure:** Typically, a Letter of Wishes is not disclosed to the beneficiaries unless ordered by a court or necessary for trust administration.

3. Non-binding Nature

- **Role:** Expresses the settlor's thoughts but is not legally binding on trustees.
- **Consideration:** Trustees are unlikely to ignore it, serving as a valuable reference for understanding the settlor's wishes.

4. Witnessing

- **Recommendation:** Ensure the letter is signed and dated but not formally witnessed.
- **Separation:** Ideally signed at a different time than the trust deed or will to maintain separation and prevent it from becoming part of the trust instrument.

5. Flexible for Changes

- **Frequency:** Should be regularly reviewed and updated to reflect any alterations in circumstances.

6. Non-legally Binding

- **Clear Communication:** The letter is not designed to be legally binding.
- **Recommendation:** Clearly state that it is not part of the trust deed and ensure acknowledgment by trustees.

7. How to set up a Letter of Wishes

- **Tailored Document:** Typically, a bespoke document written by the settlor with guidance from legal professionals or financial planners.
- **Content Variation:** No standard format; content depends on the purpose of the letter and the type of trust establishment.

GUIDANCE

The following should be considered when providing guidance in your Letter of Wishes.

For Trusts in a Will

Guidance on gifts, instructions for child/ren's care, and funeral arrangements.

For Trusts established through a Trust Deed

Guidance on the management of the trust, investment strategies, benefits for specified beneficiaries or beneficiary classes, considerations for capital distributions, stipulations on the trust's duration, and provisions for the support of younger beneficiaries.