

POA-05 Declarations of Trust (Section 55 of the TLA)

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1 General

The Registrar cannot enter trusts on a certificate of title but declarations of trust may be deposited with the Registrar under s.55 of the Transfer of Land Act 1893 (TLA). The original or a duplicate may be deposited and a Registrar's Caveat is lodged to protect the interests of the beneficiaries under the trust deed.

2 Form Requirements

There is no special form to be used (but may be prepared using a [Blank Instrument](#) Form), but any form used is to be duly stamped by the Office of State Revenue (s11(1)(c) Duties Act) and it must contain:

- the name and address of the registered proprietor (the trustee)
 - the name and address of the beneficiary
 - an accurate description of the land
 - a declaration by the trustee that the land specified is held in trust for the beneficiary
- and
- any special limitation, or condition on the powers of the trustee; and must be dated and signed by the trustee in the presence of an adult witness.

In the case of family trusts or settlements it is necessary to produce and file with a declaration of trust a copy of the family trust or settlement deed. Later declarations of trust in the same family

trust or settlement should contain a reference to the number of the first declaration of trust in which the copy is filed. This is necessary because the Registrar must know who is to be protected and what powers, other than those in the Trustees Act 1962, the trustee has to deal with the land.

3 Removal Options

As a general rule the Registrar's Caveat will remain in place to protect the identified beneficiaries until one of the following actions is undertaken.

The Registrar's Caveat cannot be removed by anyone other than the Registrar of Titles.

3.1 By Transfer

Where a bona fide Contract of Sale is executed and upon the presentation of the stamped Transfer of Land to the purchaser. The Registrar of Titles will remove the caveat placed on the certificate of title identifying the land as trust property.

A transfer by way of power of sale by a Mortgagee, local government for non-payment of rates or a sale under property seizure and sales order. These types of transfers will remove the property as a trust asset and upon the processing of the Transfer the caveat will be removed.

The removal process occurs when the documents are lodged and are in a registerable form, not before.

3.2 By Vesting / Winding Up / Termination of the Trust

Superannuation Funds and Trust Funds generally provide for the vesting, winding up or termination of the Fund. Each scenario may require different actions by the trustee and varies if the trustee is a company or individual(s).

If the trust property is held in the name of a trust company the relevant transfer is required and where appropriate supported by the relevant evidence, sometimes in the form of Vesting Deed or Agreement.

In the event that the trustee(s) are one and the same as the beneficiaries, a transfer cannot be used. See Transfer by a Proprietor to themselves ([TFR-01 Transfers - Common Scenarios](#)). A person seeking the withdrawal of the caveat needs to satisfy the Registrar of Titles that the proposed transaction is one that the trustee has authority to undertake. As part of that process, the person seeking withdrawal of the caveat should make the request in writing setting out the reason for the withdrawal of caveat, the basis on which it is claimed that the trustee has power to undertake that transaction and any additional evidence to support the written request, such as a statutory declaration(s), stamped contracts or agreements, beneficiaries consents to Trustee exercising a power which is not or may not be authorised by the Trust Deed, Will or Statute.

4 Also see

[- POA-01 Powers of Attorney](#)

[- POA-02 Powers of Attorney - types of](#)

[- POA-03 Powers of Attorney - enduring](#)

[- POA-04 Powers of Attorney - revocation](#)

[- CAV-05 Caveats - Removal](#)
