

How-to Guide

Avoid Poisoning Property

October 2023

Description	This guide looks at how to avoid poisoning your investment property.
Other relevant guides	<ul style="list-style-type: none">- <i>How to set up a Unit Trust</i>- <i>How to negative gear with a Unit Trust</i>- <i>How to negative gear with a Discretionary Trust</i>- <i>How to establish a Land Tax Unit Trust</i>
Documents required	<ul style="list-style-type: none">- <i>Constitution</i>- <i>Consent to act as Director</i>- <i>Consent to act as Secretary</i>- <i>Consent to use Registered Office</i>- <i>Member Consent</i>- <i>Share Certificate</i>
Notes	<p>The following addresses the steps that need to be taken to avoid poisoning your investment property.</p> <p>The most important issue today when investing in residential real estate is flexibility in relation to what you can do with the property in the future. Over 70% of investors poison their property by acquiring it in the wrong structure and therefore preventing the property from ever being owned by a superannuation fund.</p>

Step 1 – What is poison property?

Poison property is investment property you own that may never be transferred to your superannuation fund, allocated pension fund or a unit trust in which your superannuation fund or allocated pension fund may own units at any time in the future.

Step 2 – What does it all mean?

If you own poison property, then the rents will be taxable at your marginal tax rate forever. The same applies to any capital gains derived from the disposal of the property, subject to the 50% discount.

NOTE: The income tax rate of a superfund is 15% and tax on capital gains is subject to 10% tax. The income tax rate of an allocated pension fund is 0%.

Step 3 – How to avoid poisoning your property

Don't acquire residential investment property in your own name, in a discretionary trust, company or jointly with your spouse.

Step 4 – What if I have already poisoned my investment property?

Unfortunately, the superannuation rules are quite strict and if you acquire the property in the wrong structure, you can never transfer it to your superfund.

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Step 5 – Could I have avoided this and still borrowed against the property?

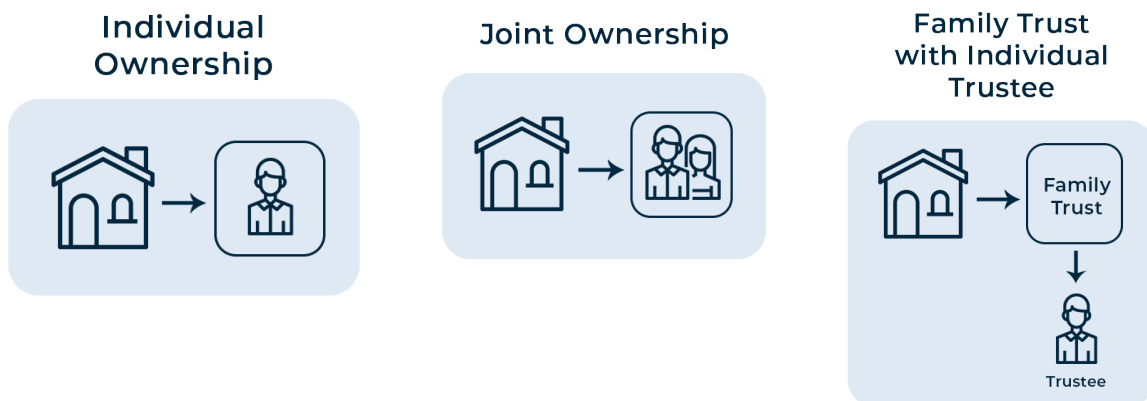
Yes. The property does not have to be owned by your superfund today. If you get the structure right, you can transfer it to your superfund in 20 years' time. You can achieve this by issuing and redeeming units in the trust. The superfund would apply and be issued with units and the units held by the discretionary trust would be redeemed. In the meantime, you can negative gear, develop, or do whatever you want to do with the property. If you get it wrong, then in 20 years you are stuck with the property at your marginal tax rate (i.e. up to 48.5%)

Step 6 - What if I already own some investment property and will be acquiring more in the future?

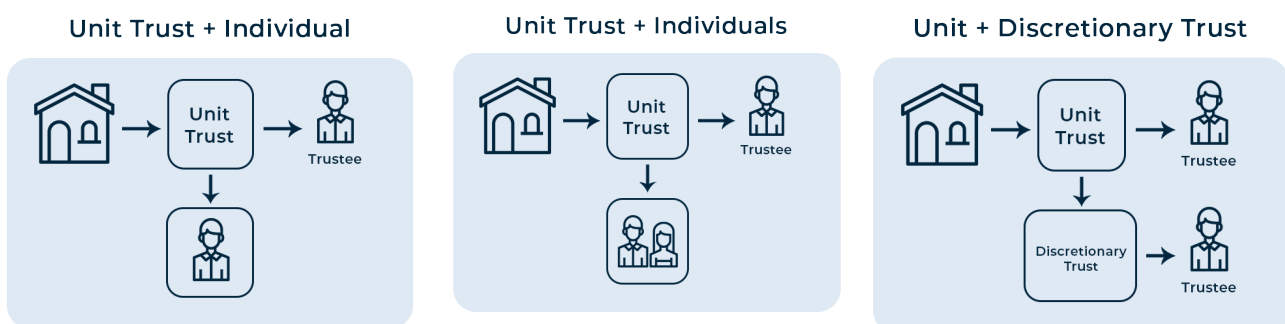
Now would be the greatest time to establish the most appropriate structure and avoid making the same mistake again. At the very least the properties you acquire in the future can be owned by your superfund when you retire.

Please refer to the following diagram.

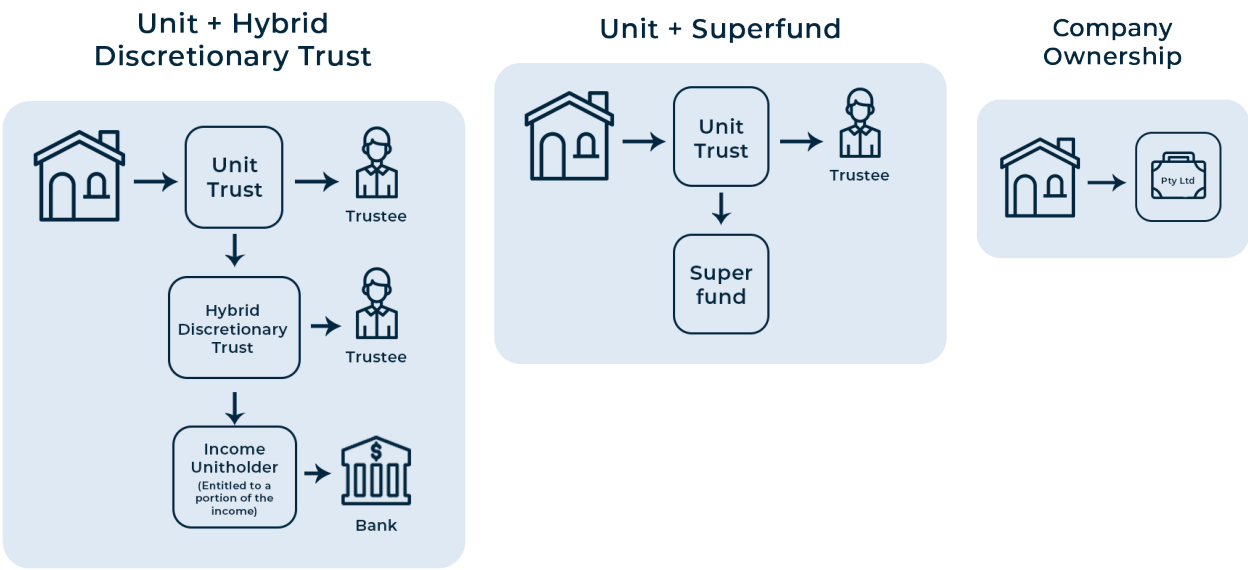
The structures below would poison a residential investment property



The structures below would NOT poison a residential investment property



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NOTE: The above information is meant as a general guide only, and the information applies to the documents provided by Macquarie Group Services.

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