

Description	This guide looks at the considerations and steps involved in establishing a WA Property Trust.
Other relevant guides	<ul style="list-style-type: none">- <i>How to set up a discretionary trust</i>- <i>How to negative gear with a trust</i>
Documents required	<ul style="list-style-type: none">- <i>Resolution to establish a unit trust</i>- <i>Trust deed</i>- <i>Unit Certificate</i>
Notes	When forming a unit trust, a number of considerations need to be resolved before following the steps to its establishment.

Step 1 – Identify Trustee and Initial Unitholder(s):

a) The Trustees

The trustee of a trust controls its day-to-day operations and decides who will receive distributions of its income and/or capital. Subject to certain restrictions, the trustee of a trust controls what happens to its assets. The trustee of a trust is the entity that enters into transactions on its behalf, including the borrowing of funds, entry into contracts and acquisition of assets.

SUGGESTION: The trustee is usually a senior person from the group of people who will benefit under it, more than one such person or a company controlled by such persons.

TIP: If a trust is merely a passive investor in income-producing assets, avoid using a company as its trustee. In these circumstances, it is recommended that senior people from the group of people who will benefit under the trust are made its trustees.

b) The Unitholder

The Unitholders of a unit trust are entitled to receive proportional distributions of its income and/or capital. The Unitholders are normally issued with ordinary units that provide them with such entitlements.

SUGGESTION: The initial Unitholder of a unit trust is usually the trustee of a discretionary trust or the trustee of a superannuation fund.

TIP: Ensure that the trustee of a discretionary trust or the trustee of a superannuation fund is selected as the unitholders of the unit trust.

WARNING: The sole trustee of a trust and its sole Unitholder cannot be the same person.

Step 2 – Complete the instruction sheet or order online

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The screenshot shows the Macquarie Group Services website. The header includes the MGS logo and navigation links: Home, Products, Services, Information, Macquarie TV, Documents, About, and My Account. A banner below the header reads 'The Professionals Choice' and 'Providing tax, superannuation education and precedent products'. The main content area displays the 'WA Property Unit Trust - Trustee Discretion' form. The form includes fields for 'Trust Name', 'Proper Law' (set to WA), 'Unit Price', and 'Special Unit Price (optional)'. There are also sections for 'Trustees' and 'Unit Holders', each with an 'Add new' button.

NOTE: There are generally no restrictions in relation to the naming of a trust, e.g. There would be no prohibition on naming your trust the “Westpac Trust” or the “Mercedes Trust”.

Step 3 – Execute the documents

When the trust documentation arrives, ensure that the trustee executes and dates the resolution to establish the trust, and that the trustee and settlor execute and date the trust deed in the presence of a witness.

NOTE: At this point, the initial unitholders of the trust will have to give the initial sum (usually \$100) to the trustee.

WARNING: The signatures of the trustee and the initial unitholders need to be witnessed, and the witness will need to sign the deed.

Step 4 – Have the deed stamped

Have the trust deed and copies stamped at the relevant Office of State Revenue.

NOTE: The amount of stamp duty liability for the creation of a trust is different in each State and Territory and may be anywhere from nil to around \$500.

WARNING: Where stamping of a trust is required, you have a limited time to do so before penalties apply (in NSW, the period is 3 months from the date of the creation of the trust).

Step 5 – The trustee enters into transactions

The Trustee is the one who enters into transactions for and on behalf of the trust. This includes borrowing and acquiring assets. For example, if a property is acquired it is held in the Trustees name.

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NOTE: Step 3 must be completed before the trust conducts any business, including the exchange of contracts for the acquisition of real property.

Other Important Information

1. The perpetuity period for trusts is dependent upon the proper law of the trust. In Queensland the perpetuity period is 125 years. In South Australia the perpetuity period has been abolished. In all other states it is 80 years;
2. A sole trustee of a unit trust may also be one of its unitholders, but not the only one;
3. The unitholders of a unit trust can unanimously call on its trustee to distribute the trust's income or capital to them;
4. Additional unitholders can be added at any time;
5. If a trust is acquiring real property, then the trust must have been in existence and evidenced in writing prior to the exchange of contracts for its purchase;
6. A unit trust is eligible to receive the general 50% Capital Gains Tax discount;
7. The trustee of a unit trust is obliged to distribute its income and capital to its unitholders in proportion to their respective unitholdings;
8. Distributions of the income of a trust to minors (i.e. people under 18 years of age) are generally taxed at the penal rate of 66%;
9. If the trustee of a trust is sued for an amount representing more than the available assets of the trust, they will generally become personally liable;
10. If a business is conducted through a trust, then its trustee should be a company;
11. If a trust is merely a passive investor in income-producing assets, its recommended that senior people from the group of people who will benefit under it are made its trustees;
12. There are taxation concessions when a superannuation fund invests in a unit trust (subject to certain restrictions).

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

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