

# Update: 15 October 2013 Giving notice under a trust deed



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Solicitors



## Summary

The NSW Supreme Court gave a useful judgement in August about how wrong a notice given under a trust deed can be, yet still have effect.

## What were the problems?

Notice was given under a discretionary trust deed, purporting to change the appointor. The notice was both inaccurate and incomplete.

The Court looked closely at notice provisions of the trust deed and general principles of interpretation to decide whether each problem was fatal.

## What were the decisions?

The problems and the Court's decisions were:

*Wrong date for the trust deed* – not critical because the trust referred to was clear.

*Notice left undated* – not critical because the deed didn't require a 'dated' notice.

*Notice a copy not an original* – not critical because the deed didn't require an 'original' notice.

*No delivery of the notice* – critical because the trustee needed to know who the appointor was.

Ultimately, the notice was ineffective and so subsequent attempts to change the trustee also failed.

## What is significant?

All trust cases show how important it is to read the deed. Far too many trust documents we see use incorrect language (eg appointor instead of protector) or an incorrect procedure (eg no appointor's consent to a variation). Unlike companies, each trust is created in its own terms and unthinking use of a precedent will not work.

As this case showed, some flaws will not be fatal, but having to go to the Supreme Court is a time-consuming and expensive substitute for preparing a document correctly. If any other reason was needed for making the effort to get things right, many of these cases also become professional negligence actions against the advisors involved.

## How can Fleming Muntz help?

Fleming Muntz has particular expertise in trust work. We can undertake trust transactions, guide restructuring or advise on options if things have gone wrong.

### Important fine print

**This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.**

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