

**Document Class:** ADJUDGED  
**Document Name:** Declaration of Trust  
**Document Description:** Land – Duty Already Paid  
**Document Code:** ADJ

### Introduction

A Declaration of Trust is subject to *ad valorem* voluntary conveyance stamp duty pursuant to Section 71(3)(a)(ii) of the SD Act. Section 71(13) of the SD Act provides that where:

- a document transferring property to a trustee has been stamped with *ad valorem* stamp duty; and
- there is a further document that evidences or records the fact that the person took the property or interest in the property as a trustee (ie. the “Declaration of Trust”), then that further document will be “Adjudged Duly Stamped”.

This guide note applies to a Declaration of Trust where the *ad valorem* stamp duty has been paid on the document evidencing the conveyance of land.

**The following similar transactions cannot be stamped under this document heading:**

If the trust property held is **not** land - refer to the appropriate document heading:

- [Adjudged - Declaration of Trust – Property – Duty already paid;](#)
- [Adjudged - Declaration of Trust – Units – Duty already paid;](#) or
- [Adjudged - Declaration of Trust – Marketable Securities – Duty already paid;](#)

If *ad valorem* stamp duty has **not** been paid on the conveying document, the Declaration of Trust must be submitted for the Opinion of the Commissioner of State Taxation advising the consideration paid and the market value of the property held in trust.

If land is being transferred pursuant to the Declaration of Trust from the trustee to the beneficiary, the transfer must be submitted for opinion together with the stamped Declaration of Trust.

**What *documents* can I stamp under this document heading?**

The document can be in the form of:

- an Agreement that acknowledges, evidences or records the creation of the trust arrangement (commonly known as a Declaration of Trust or Acknowledgment of Trust);
- a Deed that acknowledges, evidences or records the creation of the trust arrangement (commonly known as a Declaration of Trust or Acknowledgment of Trust); or
- any other document that acknowledges, evidences or records the creation of the trust arrangement (commonly known as a Declaration of Trust or Acknowledgment of Trust).

**What types of *transactions* can I stamp under this document heading?**

A document that acknowledges, evidences or records a trust arrangement is deemed **suitable** for self-stamping under this document heading where:

- a previous document that conveyed the property to a trustee has been stamped with *ad valorem* stamp duty; and
- the document that acknowledges, evidences or records the trust arrangement is dated the same date as the conveying document.

**What stamp duty is payable on this document?**

No stamp duty is payable, the document is “Adjudged Duly Stamped”.

**What evidence do I need to retain for audit purposes?**

For audit purposes, you will need to retain the following documentation:

- a copy of the stamped documents (both the conveyance of land document and the document acknowledging, evidencing or recording the trust arrangement); and
- evidence that the purchase funds were provided by the beneficiary of the trust.

**Example 1 – Declaration of Trust (Land)**

Bill and Megan Cooke as trustees of the Cooke Family Trust purchase an investment property for \$185,000.

The parties execute a Memorandum of Transfer of Land and on the same day execute a Declaration of Trust, which states that they are holding the property as trustees of the Cooke Family Trust.

All funding for the purchase has been obtained from a bank loan in the name of Bill and Megan Cooke as Trustees of the Cooke Family Trust.

The Declaration of Trust is “Adjudged Duly Stamped”.

The Memorandum of Transfer of Land must be stamped under the document heading:

- [Conveyance of Land – For Consideration – Conveyance of Land](#) (CL).

**Example 2 – Joint Venture Agreement (Land)**

Jim, John and Jane have jointly purchased land and intend to sub-divide this land into three equivalent size allotments.

Jim, John and Jane have entered into a Joint Venture Agreement acknowledging that after the sub-division the parties will transfer:

- Lot 1 to Jim;
- Lot 2 to John; and
- Lot 3 to Jane.

The Joint Venture Agreement also evidences a trust arrangement between Jim, John and Jane.

The Memorandum of Transfer and Joint Venture Agreement, have been executed on the same day. Jim, John and Jane have contributed equally to the purchase funds for the land.

The Joint Venture Agreement is “Adjudged Duly Stamped”.

The Memorandum of Transfer of Land must be stamped under the document heading:

- [Conveyance of Land – For Consideration – Conveyance of Land](#) (CL).

**What section of the SD Act applies?**

Section 71(13)