

Document Class: ADJUDGED
Document Name: Declaration of Trust
Document Description: Property – 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. “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 property (not including land, marketable securities or units).

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

If the trust property held is land, marketable securities or units - refer to the appropriate document heading:

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

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.

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 heading where:

- a previous document that conveyed the property (not land, marketable securities or units) 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 property document and the document acknowledging, evidencing or recording the trust arrangement); and
- evidence that the purchase funds were provided by the beneficiary or the trust.

Example 1 – Declaration of Trust (Property, not land, marketable securities or units)

Bill and Megan Cooke as trustees of the Cooke Family Trust purchase plant and equipment for \$130,000.

The parties execute an Agreement evidencing the sale and purchase of the plant and equipment and on the same day execute a Declaration of Trust, which states that they are holding the plant and equipment 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 Agreement evidencing the sale and purchase of the plant and equipment must be stamped under the document heading:

- [Conveyance – Other – For Consideration – Property \(not land/shares/units\)](#) (C).

What section of the SD Act applies?

Section 71(13)