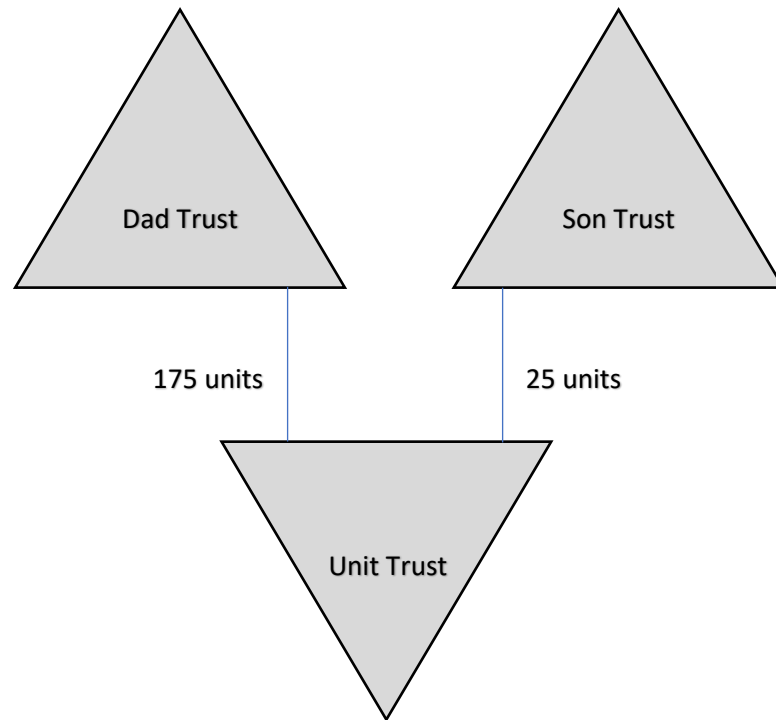


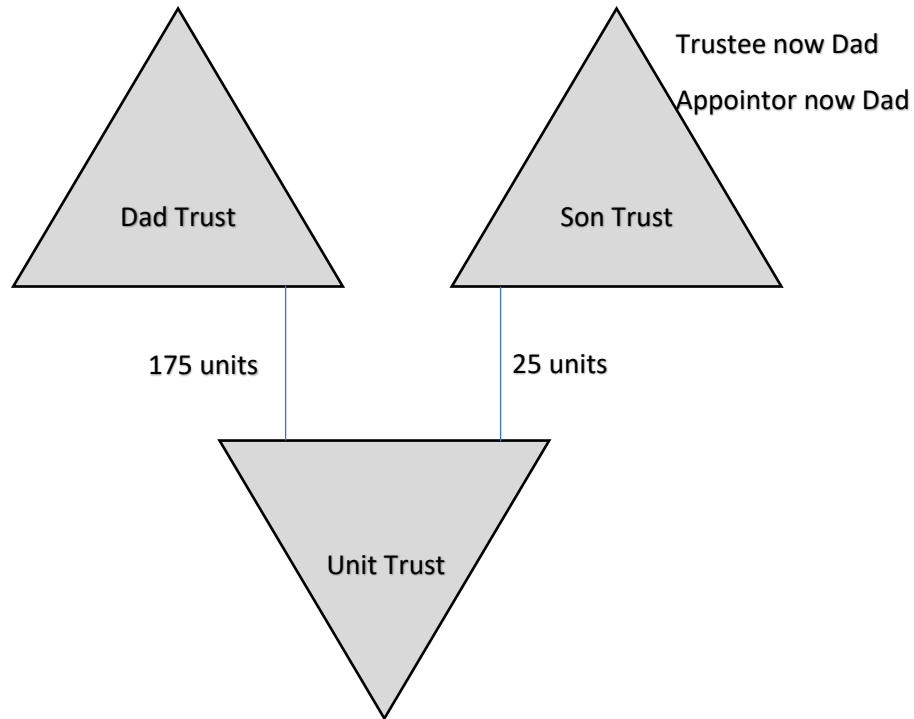
Case study



Purchases property in which Son will live on with Daughter-in-Law (property contract signed but not settled yet)

- 1 Unit Trust unitholders include:
 - a Dad's Family Trust (**Dad Trust**) – 175 units; and
 - b Son's Family Trust (**Son Trust**) – 25 units.
- 2 The objective for Son to gradually purchase the Property from Dad via the unitholdings.
- 3 As the Son pays dad sums of monies in the future, then Dad will transfer additional units to Son.
- 4 Is there anything that can be done:
 - a To reduce the potential stamp duty payable on the transfer of units from Dad's Family Trust to Son's Family Trust?
 - b To reduce the potential for Son's interest in the Unit Trust to form part of the marital pool in the event of divorce between the Son and the Daughter-In-Law?
- 5 It is also accepted that the Unit Trust was set up in error by giving the Son an immediate interest prior to the Son paying Dad the appropriate 'consideration'.
- 6 It is agreed that Son Trust will transfer its units back to Dad Trust initially and pay the duty on its units (subject to steps at Option A at Annexure 1)
- 7 This is despite that settlement has not occurred due to section 52 *Duties Act QLD 2001*
- 8 Options 1 to 3 at Annexures 2 to 4 outlines potential methods to transfer control and ownership in Unit Trust from Dad to Son without stamp duty issues at a future date.
- 9 Options do not consider CGT or GST consequences.

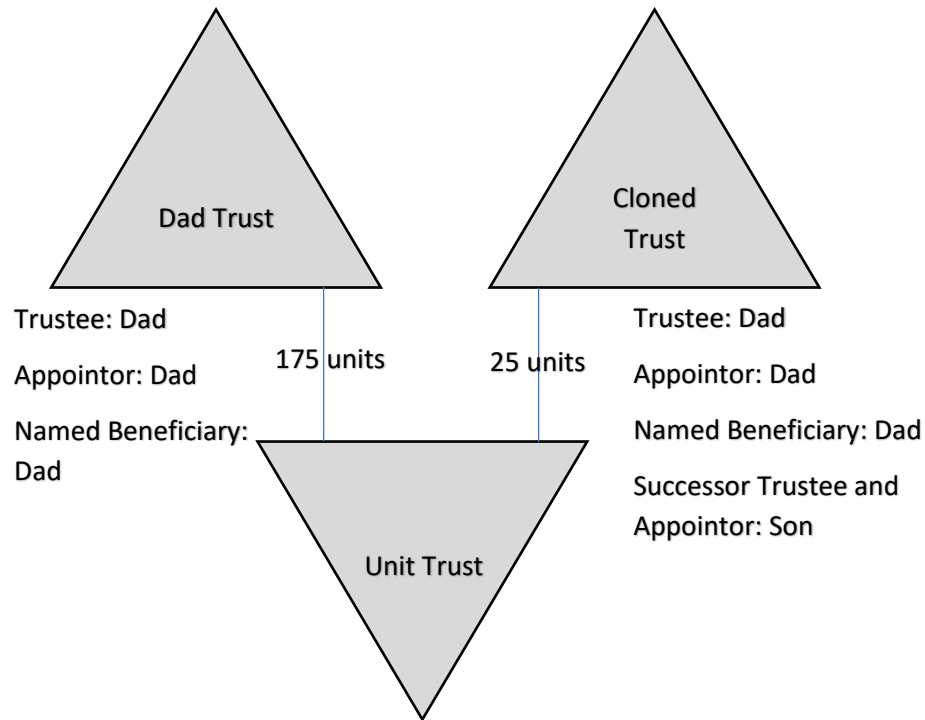
Annexure 1 – Option A: Reduce stamp duty on Son Trust transfer of units to Dad Trust



Purchases property in which Son will live on with Daughter-in-Law (property contract signed but not settled yet)

- 10 An option to reduce duty payable of a transfer of units in a unit trust from Son Trust and Dad Trust includes 'restructuring Son Trust' to change the trustee and appointor to Dad.
- 11 There are stamp duty exemptions for a change of trustee in QLD provided there is not a change of beneficiaries.
- 12 Although there are advantages in reducing the duty liability, 'restructuring Son Trust' will require the consent of the persons currently in control of Son Trust.
- 13 If this includes Son and Daughter-In-Law, then their signatures will be required.
- 14 Further, keeping the units held by Son Trust which originally listed the Son (presumably) in control of the trust reduces any protection from a family law breakdown.
- 15 That is, making changes to a trust to 'protect' a person to a marriage from a breakdown has been 'looked through' and ignored by family courts in case law.

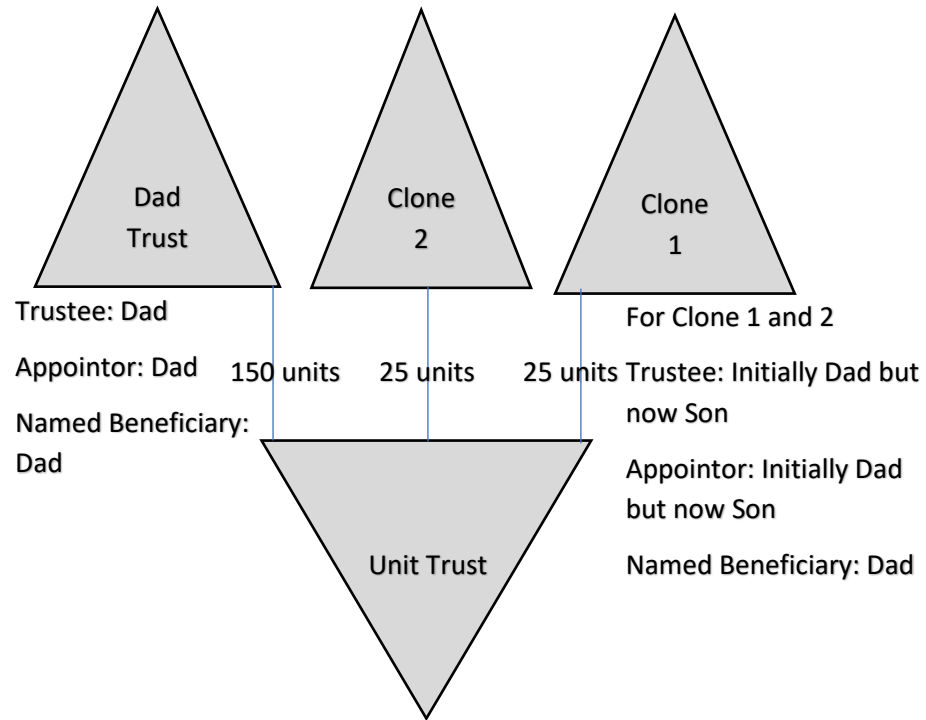
Annexure 2 – Option 1: Trust cloning and only give control of Cloned Trust to Son as part of estate plan



Purchases property in which Son will live on with Daughter-in-Law (property contract signed but not settled yet)

- 1 When it is appropriate to start 'transferring' units to Son, a 'strategy' called trust cloning could be used.
- 2 Trust cloning requires Dad Trust to be cloned (which will usually require the Trustee and Appointor and Named Beneficiary to be identical between trusts).
- 3 This allows units to be moved between the two trusts without triggering stamp duty.
- 4 Further, so long Dad remains in control of Cloned Trust, there can be an argument that assets of the Cloned Trust should not form part of Son's marital pool.
- 5 The disadvantage of such an approach would be that Son may feel that he is entitled straight away to control his 'acquired' interest.
- 6 If control is then passed to Son in the Cloned Trust (and this control can pass without triggering stamp duty consequences), then the assets of the Cloned Trust will likely be included in the marital pool.
- 7 Further, once control in Cloned Trust changes to Son, then stamp duty is payable on future unit transfers.
- 8 To reduce the Son being disgruntled, documents can be signed in relation to the Cloned Trust appointing the Son as the controller in the event Dad passes away or loses capacity.
- 9 There can therefore be a level of protection for Son from a family law breakdown perspective (subject to the Court looking through the arrangement), whilst the Son having some certainty the Cloned Trust will become his.

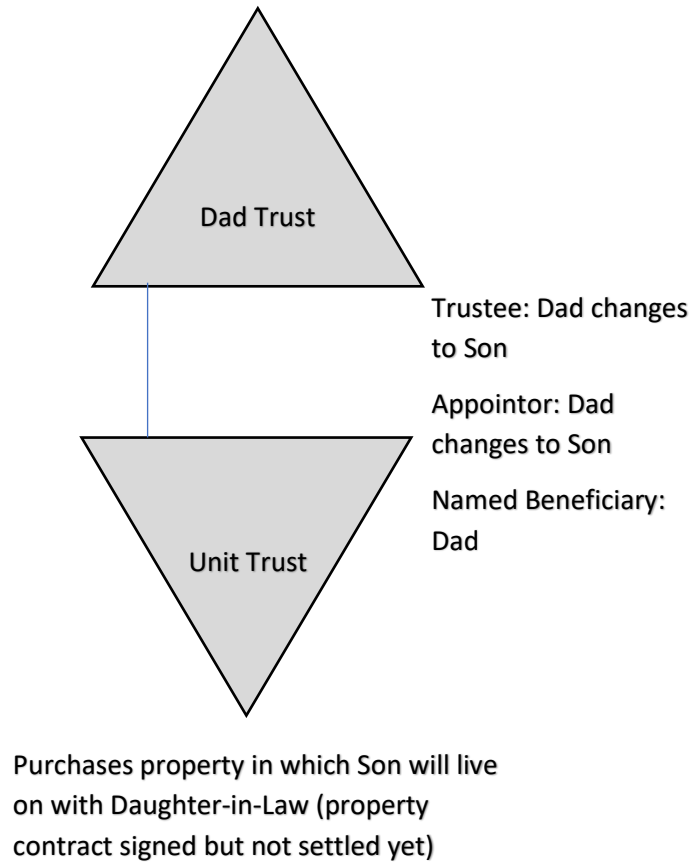
Annexure 3 – Option 2: Trust Cloning but pass control to Son after each ‘Clone’



Purchases property in which Son will live on with Daughter-in-Law (property contract signed but not settled yet)

- 1 This option uses the same strategy to have units transferred as Option 1 (Annexure 2) without stamp duty.
- 2 This option becomes relevant if Son wants immediate control over a Cloned Trust.
- 3 That is, each time units are to be transferred from Dad Trust to a Cloned Trust, a new Cloned Trust will need to be created
- 4 This advantage of this approach is that Son can take control immediately of his interest after the unit transfer.
- 5 However, this will administratively be difficult due to the number of trusts established and can be considered a 'waste of legal fees' (this coming from a lawyer).

Annexure 4 – Option 3: Change of trustee of Dad Trust upon Son making ‘final payment’



- 1 There are stamp duty exemptions for a change of trustee in QLD provided there is not a change of beneficiaries.
- 2 Where Dad and Son can agree to keep track of payments from Son to Dad, and there is a level of trust from Son to Dad that Dad will transfer control of Dad Trust to Son upon final payment, then this option could be preferred.
- 3 Although simpler and less costly; this options requires a level of trust that is not always present in families.