

WILLIAM BEAU HOLLAND and GREGORY CRAIG BROWNLESS

"Settlers"

LEGACY PREPAID FUNERALS LIMITED

"Trustee"

DEED OF TRUST



Holland Beckett

LAWYERS

DEED OF TRUST

Dated 22 October 2010

PARTIES

1. **WILLIAM BEAU HOLLAND** Solicitor and **GREGORY CRAIG BROWNLESS** Businessman, both of Tauranga ("Settlers")
2. **LEGACY PREPAID FUNERALS LIMITED** at Tauranga ("Trustee")

BACKGROUND

- A. The Settlers wish to establish a trust to enable persons to set aside funds to be applied towards the cost of their funeral arrangements while at the same time benefitting charitable purposes in their community through the application of income earned from the funds held on trust.
- B. The Trustee has agreed to act as trustee of the Trust and to hold the Trust Fund in accordance with the trusts and powers in this Deed.

THIS DEED RECORDS:

1. **Name**

The Trust created by this Deed is to be known as the "Legacy Prepaid Funeral Trust" ("the Trust") or such other name as the Trustee may adopt by resolution from time to time.

2. **Establishment**

- (a) The Trustee acknowledges it has received \$10 from the Settlers to establish the Trust Fund.
- (b) The Trustee agrees to act as Trustee of the Trust on the terms set out in this Deed.
- (c) The Trust shall comprise the Trust Fund from time to time held by the Trustee upon the trusts of this Deed.
- (d) The Trust commences from the date this Deed and continues until the Expiry Date.

3. **Objects**

The purposes and objects of the Trust are:

- (a) to provide a vehicle for Persons to establish what is commonly referred to as a "prepaid funeral account" through payments to a Client Funeral Trust Account;

- (b) to hold a Client's Contributions on trust until distributed to the Capital Beneficiaries to pay or help pay a Client's Funeral Invoice (or until such time the Client otherwise validly withdraws).
- (c) to distribute Income (after deduction of any fees, expenses or service charges) to the Income Beneficiary in support of its charitable objectives.

4. **Establishment of Client Funeral Trust**

- (a) In order to establish a Client Funeral Trust, a Person must:
 - (i) submit to the Trustee a completed Application Form;
 - (ii) pay to the Trustee the Initial Contribution; and
 - (iii) have their Application Form accepted in writing by the Trustee.
- (b) The relevant Client Funeral Trust is settled and established upon the completion of the steps in paragraph (a).
- (c) A Client may make further Contributions to their Client Funeral Trust Fund at such times and on such terms and conditions as the Trustee may prescribe. In the event further Contributions are accepted by the Trustee, they shall form part of the Client Funeral Trust Fund and be credited to the relevant Client Funeral Trust Account.

5. **Separate Client Funeral Trust Funds**

- (a) Each Client Funeral Trust Fund shall be held by the Trustee on trust to be paid, applied or allocated on the death of the Client to the applicable Capital Beneficiaries in accordance with the provisions of this Deed.
- (b) The Trustee shall at all times treat each Client Funeral Trust Fund as a separate and distinct sub-trust fund with its separate property and liabilities governed by the terms and conditions of this Deed.
- (c) The Trustee shall establish and maintain a Client Funeral Trust Account in respect of each Client Funeral Trust Fund.

6. **Capital**

- (a) Each Client Funeral Trust Account shall be held by the Trustee as a separate and distinct sub-account of the Trust Account in the name of the Trustee with the capital to be held on trust until distribution to the Capital Beneficiaries in accordance with clauses 9, 10 or 19.
- (b) The Trustee shall at all times maintain a separate Client Funeral Trust Account for each Client and Contributions shall not be held in a group investment fund or in another Client Funeral Trust Account.
- (c) No Client shall, by virtue of being a Client, have any claim on any other Client Funeral Trust Fund or Client Funeral Trust Account, or any Income, or, apart from that Client's own Client Funeral Trust Fund, on the Trust Fund.

- (d) The Trustee and the Client specifically acknowledge that
- (i) there is no intention or expectation that the Client Funeral Trust Account shall hold more than the amount of that Client's Contributions;
 - (ii) no fees, expenses or charges shall be deducted from or payable by the Client Funeral Trust Account other than an Early Withdrawal Fee; and
 - (iii) there is no intention or expectation of capital appreciation or maintenance of the real value of the Client Funeral Trust Account and the Client acknowledges that the Client Funeral Trust Fund will invested only in income earning investments with no potential for capital gains.
- (e) Any Initial Contribution accepted by the Trustee in accordance with clause 4(a) must be immediately credited by the Trustee to the relevant Client Funeral Trust Account established in respect of the relevant Client Funeral Trust.
- (f) All further Contributions made by the Client and accepted by the Trustee in accordance with clause 4(c) must be immediately credited by the Trustee to the relevant Client Funeral Trust Account in respect of the relevant Client Funeral Trust.
- (g) A Client Funeral Trust Account shall be debited with all payments authorised under clause 9 or 10.
- (h) From and after the Expiry Date or the Winding Up Date (whichever is the earlier), the Trustee shall stand possessed of the balance in each Client Funeral Trust Account upon trust to pay, apply or appropriate the same in accordance with this Deed.

7. Income

- (a) The Trustee shall stand possessed of the Income arising from monies or investments held from time to time in a Client Funeral Trust Account upon the following trusts and with and subject to the following powers:
- (i) to pay any fees, expenses or charges in accordance with clause 8; then
 - (ii) to pay or distribute the whole or part of the then balance of the Income to the Income Beneficiary.
- (b) For this purpose, the Trustee may on a daily, weekly or other basis selected by the Trustee in its discretion, arrange for all Income so arising from the Client Funeral Trust Account to be credited to the Trust Income Account.
- (c) The Trustee and the Client specifically acknowledge that no Client shall receive any income whatsoever on their Client Funeral Trust Account or from the Trust Fund as a whole and in no circumstances shall the Client receive more than their Contributions.

8. Operating Expenses

- (a) The Trustee shall not deduct any fees, expenses or charges from a Client Funeral Trust Account except such Early Withdrawal Fee as may be charged in accordance with clause 10.
- (b) The Trustee shall be entitled to charge for any fees, expenses or charges incurred by the Trustee in administering the Trust Fund, such fees, expenses or charges (except those in clause 10) to be paid for from the Trust Income Account before it is distributed to the Income Beneficiary in accordance with clause 7.

9. Death of a Client

- (a) Following the death of a Client, the Trustee shall, subject to clause 7, pay or apply the amount standing at the relevant time to the credit of the relevant Client Funeral Trust Account to the Capital Beneficiaries in the following order:
 - (i) first:
 - (A) the payment of the Funeral Provider, by payment of any unpaid Funeral Invoice(s) directly to the applicable Funeral Provider; or
 - (B) in the event that the Funeral Provider has already been paid or partly paid, then by way of reimbursement to the Funeral Provider Payee in respect of any Funeral Invoice paid by the Funeral Provider Payee; and
 - (ii) secondly, the balance (if any) to the Client's Personal Representative to be held for the benefit of the Client's estate.
- (b) Prior to making any payment pursuant to paragraph (a), the Trustee may require any or all of the following:
 - (i) a certified true copy of the Client's death certificate;
 - (ii) a certified true copy of the relevant Funeral Invoice(s) in relation to the Client;
 - (iii) in the event that a Funeral Invoice has already been paid, such proof of payment as the Trustee deems necessary;
 - (iv) a certified true copy of the Client's last will, accompanied by a declaration by the Personal Representative if they believe there to be no other outstanding Funeral Invoice and that they believe they are entitled to receive the payment provided for in paragraph (a)(ii); and
 - (v) such other information that the Trustee in its discretion may reasonably require.
- (c) Once the Client Funeral Trust Fund is exhausted, the Trustee has no further liability or obligation under this Deed in respect of the deceased Client or the Capital Beneficiaries.

- (d) The Trustee is under no obligation to see to the correct application of any moneys once paid to a Capital Beneficiary and a signed receipt from that Capital Beneficiary shall be a full discharge to the Trustee of the Trustee's obligations to the Client and that Capital Beneficiary under this Deed.

10. Emigration or Significant Financial Hardship

- (a) In the event that a Client leaves New Zealand to take up permanent residence elsewhere, or in the Trustee's discretion the Trustee believes that the Client has suffered significant financial hardship, then the Trustee shall, upon receipt of evidence sufficient in the Trustee's opinion to show that the Client has arranged to take up permanent residence elsewhere or suffered significant financial hardship (as the case may be):
- (i) deduct the Early Withdrawal Fee, from the relevant Client Funeral Trust Account; and
 - (ii) pay to the Client the balance of the relevant Client Funeral Trust Account.
- (b) The receipt of the Client in respect of such payment shall be a full discharge to the Trustee of the Trustee's obligations to the Client and the relevant Capital Beneficiaries under this Deed.
- (c) Before any payment is made to a Client under paragraph (a), the Trustee may require the production of such proofs and evidence as the Trustee in its discretion may reasonably require.

11. Powers of the Trustee

- (a) The Trustee has:
- (i) all powers over and in respect of the Trust, the Trust Fund, each Client Funeral Trust and each Client Funeral Trust Fund which it could exercise if it were the absolute and beneficial owner of, as the case may be, the Trust, the Trust Fund, that Client Funeral Trust and that Client Funeral Trust Fund; and
 - (ii) all powers given to trustees by law and in equity.
- (b) Without limiting clause 11(a), the Trustee shall have full and absolute power to do the following:
- (i) create reserve funds from Income for anticipated expense;
 - (ii) employ any Person for any purpose;
 - (iii) appoint an attorney;
 - (iv) give guarantees and indemnities, alone or with third parties, for any purpose;
 - (v) delegate their powers to the extent permitted by law but without in any way releasing the Trustee from its obligations under this Deed;

- (vi) to deduct from each Client Funeral Trust Account any Early Withdrawal Fee;
- (vii) to pay from the Trust Income Account to itself or any other Person such amount as the Trustee considers necessary or reasonable to meet fees, costs, disbursements, expenses and liabilities incurred or properly payable by the Trustee or any other Person in respect of the management and administration of the Trust;
- (viii) to invest the Trust Fund in accordance with this Deed;
- (ix) pay any income or profit to its shareholders so long as it retains charitable status with the Charities Commission;
- (x) to enter into any agreement contract option or other right in relation to the Trust Fund solely for the purpose of implementing the payment in accordance with the objects and purposes of the Trust and to do such other things as may be necessary to perform and enforce such agreements contracts or rights and obligations arising therein;
- (xi) to institute, prosecute, compromise and defend legal proceedings;
- (xii) to open and maintain such bank accounts with a Registered Bank in the name of the Trustee or the Trust; and
- (xiii) make payments to the Client, the Capital Beneficiaries or the Income Beneficiary in accordance with this Deed.

12. Powers of Investment

- (a) The Trustee shall invest all or any part of the Trust Fund including all monies held in a Client Funeral Trust Account on interest bearing deposits on call or for such term as the Trustee determines with any Registered Bank. The Trustee may determine, at any time, that such monies be invested and held in another form of account.
- (b) The Trustee shall have no obligation to consider the matters set out in section 13E of the Trustee Act 1956 (and any similar provision contained in any amendment or substitution for that Act) and instead the Trustee may invest as it believes appropriate which may involve investing the entire Trust Fund with one or more Registered Banks.
- (c) The parties acknowledge that this power to invest shall constitute a contrary intention for the purposes of section 13D of the Trustee Act.
- (d) The Trustee is not under any duty to formulate an investment strategy; and sections 13B and 13C of the Trustee Act 1956 (and any similar provision contained in any amendment or substitution for that Act) are not binding on the Trustee.

13. Duties of the Trustee

- (a) The Trustee shall be responsible for the investment and management of the Trust Fund.

- (b) The Trustee will keep and maintain all administration, financial and other records that shall be necessary to properly administer and manage the Trust, and in particular will take all reasonable steps to ensure that:
- (i) proper financial records are kept on behalf of each Client in respect of financial transactions and other matters;
 - (ii) annual accounts are prepared in respect of the Trust and all Client Funeral Trusts; and
 - (iii) any taxation returns necessary are prepared and filed and any tax due to the Inland Revenue department is paid from the Trust Income Account.

14. **Audit**

The Trustee shall at least once every year have the accounts of the Trust Fund audited by an auditor who is a member of the Institute of Chartered Accountants of New Zealand, and make such reports available to a Client upon request and payment of a reasonable fee.

15. **Delegation by Trustee**

The Trustee shall have, to the extent permitted by law, full power to delegate to its officers and employees, or to any attorney, agent or other Person, all or any of the powers, authorities and discretions exercisable by the Trustee under this Deed but without in any way releasing the Trustee from its obligations under this Deed.

16. **Trustee's Indemnity and Liability**

- (a) The Trustee shall not be liable for:
- (i) any losses suffered by a Client Funeral Trust Fund, including any loss suffered in respect of the investment of monies held in a Client Funeral Trust Account, and further including any loss of income or capital suffered by such monies, except losses arising from the Trustee's own dishonesty, wilful default or wilful breach of trust; or
 - (ii) any act or attempted act or any omission done or not done in good faith in the proper exercise of or pursuant to any discretion invested in the Trustee by this Deed or at law; or
 - (iii) any payment made to the Client, a Capital Beneficiary, the Income Beneficiary, or to any Person, appearing to the Trustee to be entitled to payment in accordance with this Deed, and the Trustee shall not be bound to see to the application or the destination of such payment.
- (b) The liability of the Trustee under this Deed, or at law, at all times shall be limited to the assets of the Trust.
- (c) The liability of the Trustee under this Deed, or at law, in respect of each Client Funeral Trust Account shall at all times be limited to the balance of the relevant Client Funeral Trust Account at the date of death of the Client.

- (d) The Trustee shall not be liable for the balance of any Funeral Invoice (if any) that exceeds the balance of the Client Funeral Trust Account and may remain unpaid.
- (e) Any losses incurred in respect of investments relating to a Client Funeral Trust Account shall be borne by and allocated to that Client Funeral Trust Account only.

17. Appointment and removal of Trustee

- (a) The Trustee at the date of execution of this Deed shall be Legacy Prepaid Funerals Limited.
- (b) The office of Trustee becomes vacant if:
 - (i) the Trustee resigns from office; or
 - (ii) the Trustee becomes bankrupt; or
 - (iii) the Trustee is placed under statutory management; or
 - (iv) the Trustee goes into liquidation or receivership; or
 - (v) the estate of the Trustee is assigned for the benefit of the Trustee's creditors.
- (c) If the office of Trustee becomes vacant for any reason, then the trustees for the time being of the Legacy Trust shall have the power of appointment of a new trustee.

18. Alteration of Trust Deed

The Trustee may, from time to time, by deed alter, rescind or add to any of the provisions of this Deed provided that such alteration, rescission or addition in the opinion of the Trustee:

- (a) is necessary for the proper administration or management of the Trust;
- (b) will enable the Trustee to facilitate the objects of the Trust;
- (c) does not extend the Trust beyond the Expiry Date,

and, in any such case, will not affect the general nature of the Trust.

19. Winding Up of the Trust

- (a) The Trust shall be wound up and dissolved on the earlier of:
 - (i) if the Trustee (after first consulting with the trustees for the time being of the Legacy Trust) resolves in writing that the Trust shall be wound up; or
 - (ii) the Expiry Date,

whichever date is the earlier.

- (b) Any resolution to wind up the Trust shall specify an effective end date of the Trust (the "Winding Up Date").
- (c) Upon winding up the Trustee shall:
 - (i) redeem or withdraw all investments held;
 - (ii) pay to each Client the balance of the proceeds of the relevant Client Funeral Trust Account;
 - (iii) deduct any outstanding fees, charges and expenses provided for in this Deed;
 - (iv) pay to each Client or the Client's Personal Representative (as the case may be) the net balance of the proceeds of the relevant Client Funeral Trust Account; and
 - (v) pay any balance of the Trust Fund to the Income Beneficiary.

20. **Interpretation and Definitions**

- (a) In this Deed, unless the context otherwise requires:

"**Application Form**" means the application form approved by the Trustee from time to time;

"**Balance Date**" means the 31st day of March or any other date adopted as the end of the Financial Year from time to time by the Trustee;

"**Capital Beneficiaries**" means, in respect of a Client Funeral Trust:

- (a) the Funeral Provider;
- (b) the Funeral Provider Payee;
- (c) the Personal Representative; and
- (d) in the circumstances of clause 10, the Client.

"**Client**" means any Person who establishes a Funeral Trust by completing the steps in clause 4(a).

"**Client Funeral Trust**" is a sub-trust established pursuant to this Deed by a Client for the purpose of paying, or contributing toward the payment of, the funeral expenses of that Client;

"**Client Funeral Trust Account**" means, in respect of a Client, the sub-account described in clause 6;

"**Client Funeral Trust Fund**" means, in respect of a Client Funeral Trust and Contributions by a Client, all money and assets acquired and held by the Trustee as a result of those Contributions from time to time pursuant to this Deed;

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"Contribution" means, in respect of a Client Funeral Trust, any amount paid to the Trustee by or on behalf of a Client;

"Deed" means this deed and includes the schedule and any amendments or variations made in accordance with clause 18;

"Early Withdrawal Fee" means any reasonable fee that the Trustee may from time to time determine in the event of early withdrawal of the Client from the Trust pursuant to clause 10;

"Expiry Date" means 80 years less one day from the date of this Deed Provided that the Trustee shall have the power to reduce or extend this Expiry Date to such date as may be allowed by the provisions of the Perpetuities Act 1964 or any other relevant perpetuities law from time to time;

"Financial Year" means any year or other accounting period ending on the Balance Date;

"Funeral Invoice" means, in respect of a Client, any invoice or account rendered by a Funeral Provider in respect of the funeral of that Client;

"Funeral Provider" means, in respect of a Client, a funeral director, funeral home or other organisation which renders a Funeral Invoice in respect of the funeral of that Client;

"Funeral Provider Payee" means the Person that, in respect of a Client, satisfies the Trustee that they are the correct person to be reimbursed for payment of the relevant Funeral Invoice(s);

"Income" means, on any date, any income paid or payable on that date in respect of the Trust Fund and, in respect of a Client Funeral Trust Account, any income paid or payable on that date in respect of the relevant Client Funeral Trust Account;

"Income Beneficiary" means the trustees from time to time of the Legacy Trust.

"Initial Contribution" means any amount paid to the Trustee by or on behalf of a Client pursuant to an Application Form in accordance with clause 4;

"Legacy Trust" means the registered charitable trust currently known as Legacy Trust created by trust deed dated 28 June 2007;

"Person" includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, or other entity (whether incorporated or not);

"Personal Representative" means, in respect of a Client, the Client's executor(s), trustee(s), administrator(s) or any other person(s) referred to in section 65(2)(a) to (e) of the Administration Act 1969;

"Registered Bank" means any bank which is a registered bank as defined in the Reserve Bank of New Zealand Act 1989;

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"**Trust**" means **Legacy Prepaid Funeral Trust** as established by this Deed;

"**Trust Account**" means an account maintained by the Trustee with a Registered Bank which may be divided into sub-accounts in respect of one or more Client Funeral Trust Accounts and the Trust Income Account;

"**Trust Fund**" means all money and assets acquired and held by the Trustee from time to time pursuant to this Deed and includes each Client Funeral Trust Fund and any income derived from that money or those assets which for the time being has been retained by the Trustee;

"**Trust Income Account**" means the sub-account maintained by the Trustee with a Registered Bank in accordance with clause 7;

"**Trustee**" means Legacy Prepaid Funerals Limited or such other Person or Persons appointed as a replacement Trustee in accordance with clause 17; and

"**Trustee Act**" means the Trustee Act 1956.

(b) In this Deed, where the context permits:

(i) words declaring the singular include the plural and vice versa;

(ii) a gender includes all genders;

(iii) reference to a statute includes:

(A) a change to a statute;

(B) all replacement statutes;

(C) all regulations made under those statutes;

(D) a reference to a specific piece of legislation includes a reference to any amendment or replacement of it; and

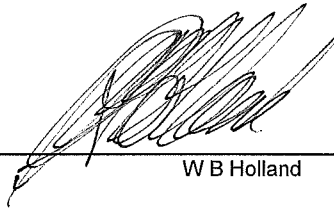
(E) references to a company, corporation, firm, partnership, joint venture, association, organisation or trust includes its successors and permitted assigns.

(c) The headings in this Deed are for convenience only and do not affect its interpretation.

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EXECUTED by the parties:

SIGNED by)
WILLIAM BEAU HOLLAND and)
GREGORY CRAIG BROWNLESS as)
Settlors in the presence of:)



W B Holland

Witness

Signature 

Name Luke Andrew Stewart

Occupation Solicitor

Address Tauranga



G Brownless

SIGNED for and on behalf of)
LEGACY PREPAID FUNERALS)
LIMITED as Trustee in the presence of:)



Witness

Signature 

Name Luke Andrew Stewart

Occupation Solicitor

Address Tauranga