

Acceptable Trust Structures

July 2024

This guide has been designed to provide licensed and accredited brokers key information to help you understand trust structures that we accept for residential lending.

Contents

Introduction to trusts	02
Types of trusts	02
Loan Parties	02
Acceptable borrowers/guarantors	02
Acceptable trust structures	02
Trust structure scenarios	03

Introduction to trusts

Trusts are an arrangement whereby a legal entity (a trustee i.e., a company or individuals) holds an asset for the benefit of one or more beneficiaries.

Where a trust is the borrower on a loan, we require a certified copy of the trust deed to be provided on submission. The requirement to obtain a verification document such as a certified copy of the trust deed is to ensure compliance with our obligations under the *Anti-Money Laundering & Counter Terrorism Financing Act 2006* (Cth).

A formal trust deed outlines how the trust operates, what powers the trust has, the beneficiaries whom income will be distributed to and legal responsibilities.

Types of trusts

We offer lending to both fixed trusts (unit trust) and discretionary family trusts.

Fixed trusts (unit trust)

In a fixed trust, beneficiaries are entitled to a pre-determined and 'fixed' share in assets and income. This leaves no leeway for the trustee to vary income distribution.

A unit trust is a fixed trust where the share in the assets and income is represented by units, unit holders of a unit trust must be individuals.

Discretionary family trusts (family trust)

Discretionary family trusts provide the trustee with a 'discretion' as the name implies, over who receives the distributions from the trust. The discretion must be exercised in accordance with the terms of the trust deed. The trustee can use their discretion each year to decide which beneficiaries receive income, and how much.

NOTE: We don't currently lend to Hybrid Trusts.

Acceptable borrowers/guarantors

Our Residential Home Loans Credit Guidelines outline acceptable borrowers/guarantors, the latest version of this document can be located on our broker website under "Useful resources".

Acceptable trust borrowers include discretionary family trusts and unit trusts. Trustees can be individuals or companies and must borrow in their own capacity and as a trustee.

All trust borrowers must meet all of the following criteria:

- Be a non-trading entity.
- Own less than five properties.
- Have turnover less than \$75 million.
- Have only natural persons as beneficiaries.

Loan Parties

Beneficial owners and controllers for the trust are individuals who (either indirectly or directly) control or own the trust, these are not necessarily one and the same as the beneficiaries.

Who is a beneficial owner/controller for a trust?

- Appointor/Guardian/Protector/Nominator/Principle etc.
- Individual Trustees
- Corporate Trustee
 - All Directors
 - All Shareholders

We require consideration of both control and ownership, and therefore we only offer lending to trust structures where all beneficial owners and controllers are a party to the loan. Please consider whether this structure is appropriate for your client.

Acceptable trust structures

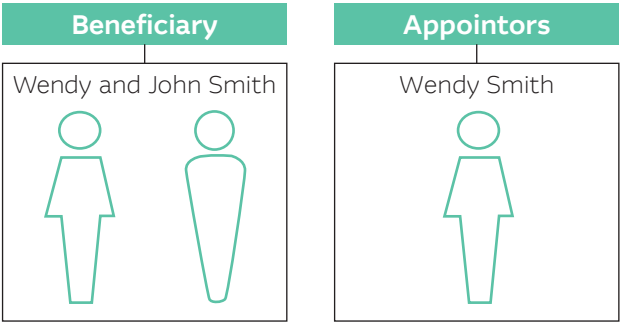
The following requirements must be met for a trust structure to be considered acceptable.

1. Trust borrower must match the trust deed.
2. All trustees must be a party to the loan.
3. Trustees can be confirmed from the front cover of the trust deed
4. If the trust has a corporate trustee then
 - ALL Directors must be a party to the loan and provide a guarantee (no exceptions)
 - ALL Shareholders must be a party to the loan and provide a guarantee. Note third party shareholdings will result in the trust structure being unacceptable (no exceptions)
 - ALL shareholdings must be beneficially held by a natural person (no exceptions)
 - No shareholding to Bearer or Nominee share classes (no exceptions)
5. Appointor MUST be the same as the individual trustees or the Directors of the corporate trustee (structure is unacceptable if the appointor is a third party)

Trust structure scenarios

Scenario 1 – Unacceptable structure with individual trustee

Wendy Smith ATF The Smith Family Trust



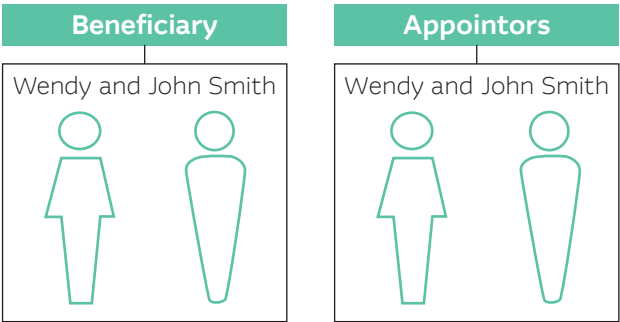
Borrower:
Wendy Smith in her own right and as trustee for The Smith Family Trust.

Beneficial Owner/Controller:
Wendy Smith (as she is a trustee and the appointor).

We don't offer lending for this structure as the sole individual trustee cannot be the same person as the sole appointor.

Scenario 2 – Acceptable structure with individual trustee

Wendy and John Smith ATF The Smith Family Trust



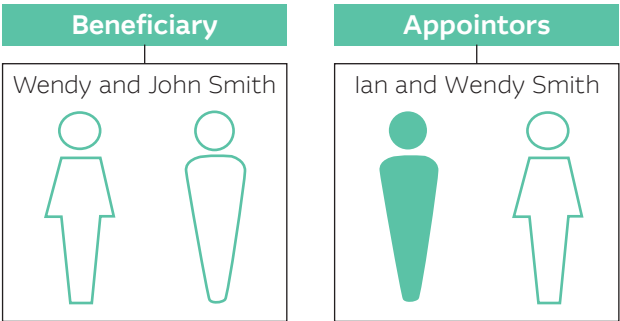
Borrower:
Wendy Smith and John Smith in their own right and as trustee for The Smith Family Trust.

Beneficial Owner/Controller:
Wendy Smith and John Smith (as they are both Trustees and both appointors).

This is an **acceptable structure** as all beneficial owners are a party to the loan.

Scenario 3 – Unacceptable structure with individual trustee

Wendy and John Smith ATF The Smith Family Trust



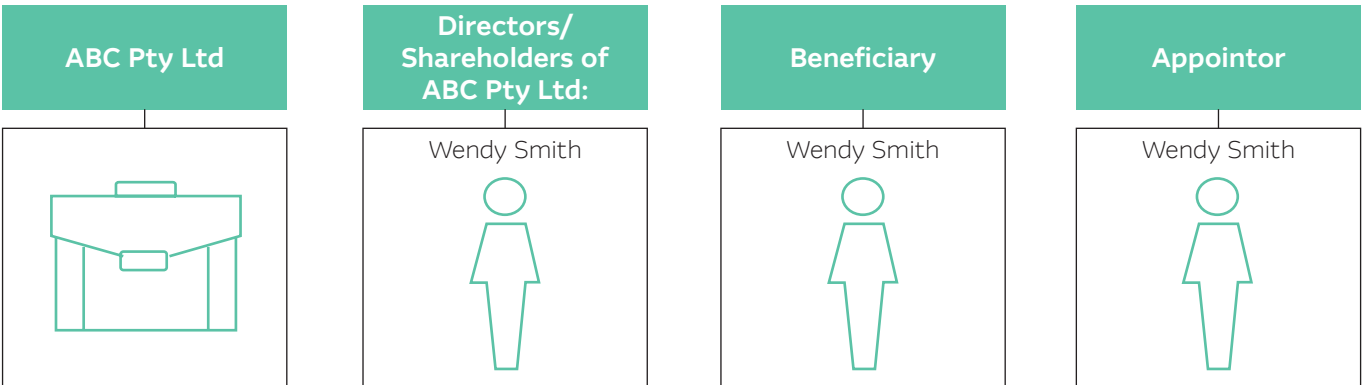
Borrower:
Wendy Smith and John Smith in their own right and as trustee for The Smith Family Trust.

Beneficial Owner/Controller:
Wendy Smith as a trustee of the trust and appointor.
John Smith as a trustee of the trust.
Ian Smith as he is an appointor.

We don't offer lending for this structure as the appointor is a third party (Ian).

Scenario 4 – Acceptable structure with corporate trustee

ABC Pty Ltd ATF The Smith Family Trust



Borrower:
ABC Pty Ltd in its own right ATF The Smith Family Trust

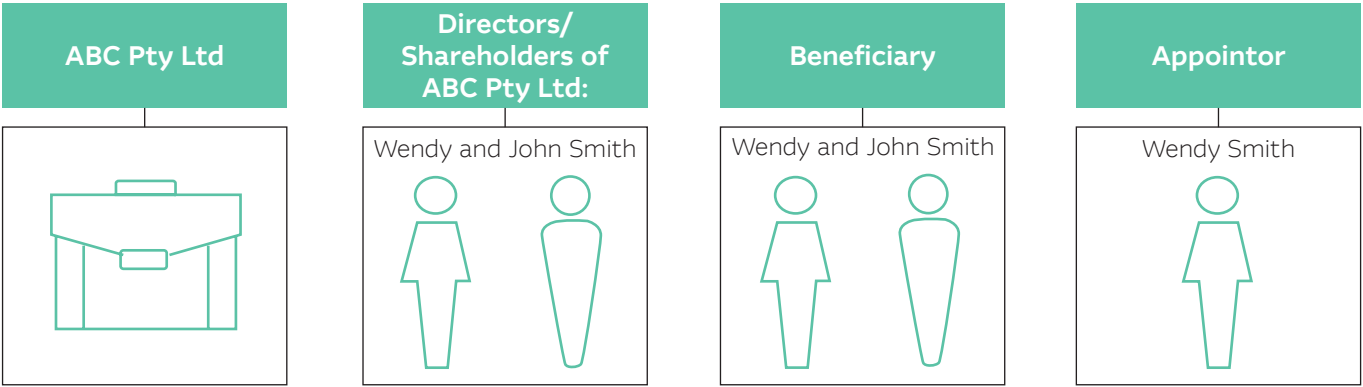
Guarantor:
Wendy Smith as she is a Director of the Trustee Company hence providing personal guarantee in her individual capacity

Beneficial Owner:
Wendy Smith as she is a Director and Shareholder of the Trustee Company and also the Appointor

This is an **acceptable structure** as all beneficial owners are a party to the loan.

Scenario 5 – Acceptable structure with corporate trustee

ABC Pty Ltd ATF The Smith Family Trust



Borrower:

ABC Pty Ltd in its own right ATF The Smith Family Trust

Guarantor:

- 1. Wendy Smith as she is a Director of the Trustee Company hence providing personal guarantee in her individual capacity
- 2. John Smith as he is a Director of the Trustee Company hence providing personal guarantee in his individual capacity

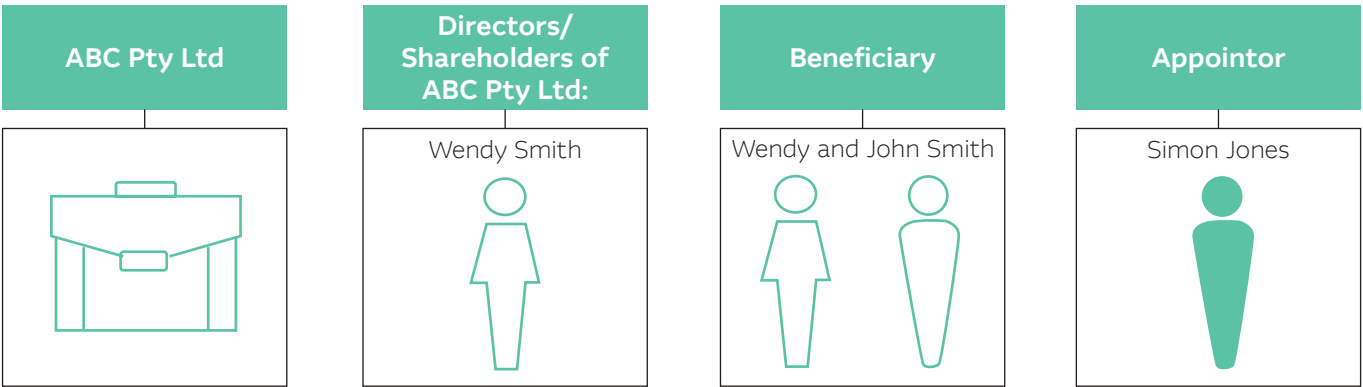
Beneficial Owner:

- 1. Wendy Smith as she is a Director and Shareholder of the Trustee Company and also the Appointor
- 2. John Smith as he is a Director and Shareholder of the Trustee Company

This is an **acceptable structure** as all beneficial owners are a party to the loan.

Scenario 6 – Unacceptable structure with corporate trustee

ABC Pty Ltd ATF The Smith Family Trust



Borrower:

ABC Pty Ltd in its own right ATF The Smith Family Trust

Guarantor:

Wendy Smith as she is a Director of the Trustee Company hence providing personal guarantee in her individual capacity.

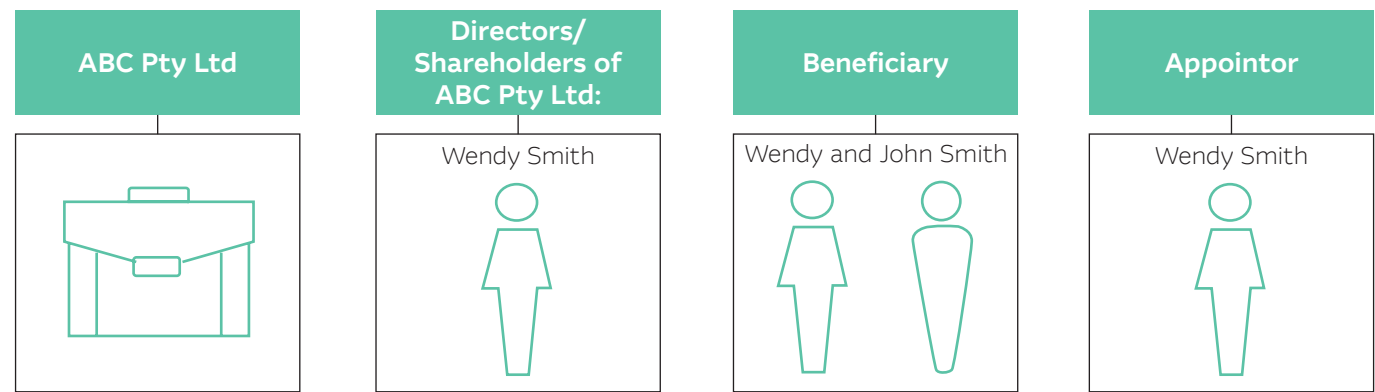
Beneficial Owner:

- 1. Wendy Smith given she is sole Director and Shareholder of the Trustee Company
- 2. Simon Jones as he is the appointor of the trust.

We don't offer lending for this structure as the appointor is a third party (Simon).

Scenario 7 - Corporate trustee with acceptability dependent on other factors

ABC Pty Ltd ATF The Smith Family Trust



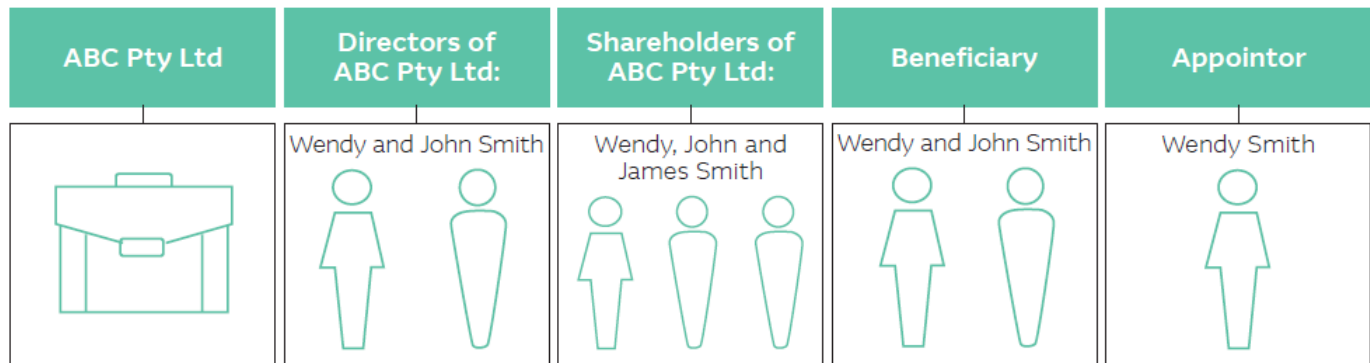
Borrower: ABC Pty Ltd in its own right ATF The Smith Family Trust	Guarantor: Wendy Smith as she is a Director of the Trustee Company hence providing personal guarantee in her individual capacity.	Beneficial Owner: Wendy Smith given she is sole Director and Shareholder of the Trustee Company and appointer of the trust.
---	---	---

In this case, we would take a guarantee from Wendy as she is the director of the trustee company and John should not be tied in to the transaction.

If servicing is not evident with Wendy's income and the income generated by the trust, you could look to take a guarantee from John as he is in a domestic relationship with Wendy and also a beneficiary of the trust.

Scenario 8 – Unacceptable structure with a corporate trustee

ABC Pty Ltd ATF The Smith Family Trust



Borrower:

ABC Pty Ltd in its own right ATF The Smith Family Trust

Guarantor:

1. Wendy Smith as she is a Director of the Trustee Company hence providing personal guarantee in her individual capacity
2. John Smith as he is a Director of the Trustee Company hence providing personal guarantee in his individual capacity

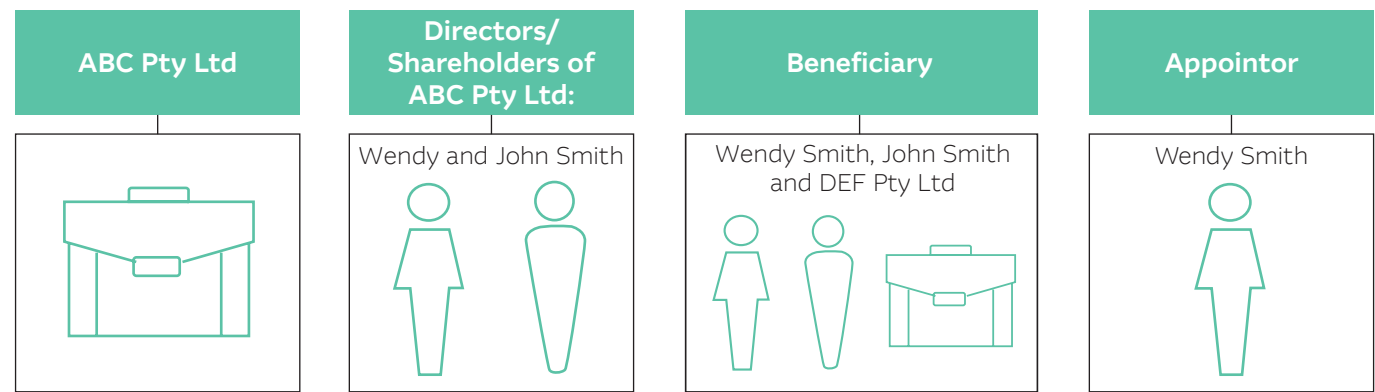
Beneficial Owner:

1. Wendy Smith as she is a Director and Shareholder of the Trustee Company and also the Appointor
2. John Smith as he is a Director and Shareholder of the Trustee Company
3. James Smith as he is a Shareholder of the Trustee Company

This is an **unacceptable structure** as not all beneficial owners of the corporate trustee are party to the loan. James Smith is a shareholder but not a guarantor or beneficiary of the trust. Third party shareholdings or beneficiaries are unacceptable.

Scenario 9 - Unacceptable structure with a corporate trustee

ABC Pty Ltd ATF The Smith Family Trust



Borrower:	Guarantor:	Beneficial Owner:
ABC Pty Ltd in its own right ATF The Smith Family Trust	<div>1. Wendy Smith as she is a Director of the Trustee Company hence providing personal guarantee in her individual capacity</div> <div>2. John Smith as he is a Director of the Trustee Company hence providing personal guarantee in his individual capacity</div>	<div>1. Wendy Smith as she is a Director and Shareholder of the Trustee Company and also the Appointor</div> <div>2. John Smith as he is a Director and Shareholder of the Trustee Company</div>

In this case, DEF Pty Ltd, owned by John Smith, is also a beneficiary of The Smith Family Trust.

This is an **unacceptable structure** as DEF Pty Ltd is a beneficiary of the trust but **not** a natural person.