



GUARDIAN

WILLS & PROBATE

ESCROW AGREEMENT TERMS

What is Escrow?

From time to time, a client's money, estate money, or other property, may become held by our office pending the settlement of a dispute or the administration of an estate. For example, the client may undertake (promise) the other side or a third party (through the law practice) that they will not deal with the money or property until the conclusion of the action or until some defined future time or event.



Why is this agreement/policy necessary?

Despite the existence of escrow agreements (whether by a letter, deed, words, or by conduct) the client may later decide to 'change their mind' and instruct our firm to return trust money or property to them (this creates a divided interest conflict of breaching a promise to a third party versus breaching our obligations to our own client). Alternatively, some 'dishonest lawyers' will try to cover their own decision making by blaming or alleging an escrow agent did not adequately secure the disputed property.

A second issue is where we have ceased to act for a client, but their dispute or litigation continues (for example the client may wish to engage another lawyer). In this situation we simply don't want to be stuck holding client money for months (or even years!) whilst we are not instructed by them.

To avoid conflicts of interests, or any regulatory breaches concerning the management of client money, the client and any law practice asking us to hold funds in escrow acknowledges that it has read these strict conditions upon which we will hold the money or property in escrow and agrees to be bound by those conditions.

This document constitutes an agreement to the client to enter into an escrow agreement ('**Escrow Agreement**') with the Law Practice.

B E T W E E N:

Gregson & Associates Gregson Empire Pty Ltd (ACN 625073618) as trustee for Gregson Family Discretionary Trust (No 1) (ABN 37986332445) Liability limited by a scheme approved under professional standards legislation

Level 4, 23 Barrack Street

Perth WA 6000

-and-

Any person (whether natural or otherwise) who pays money into Guardian Wills & Probate law practice (Guardian Wills & Probate)

trust account, or who delivers personal property to the law practice; whether a solicitor or other legal personal representative who pays money or delivers property on behalf of their principal, and or any

current or past client of Guardian Wills & Probate (Donor") agrees as follows:

1. HOW THESE CONDITIONS ARE ACCEPTED

1.1. The Donor can accept the terms of this agreement by:

- 1.1.1. Accepting the law practices terms of engagement (terms and conditions for acting), By
- 1.1.2. executing a copy of this agreement, Giving Guardian Wills & Probate notice in writing,
- 1.1.3. By conduct, especially in the case of paying money into Guardian Wills & Probate trust
- 1.1.4. account (with or without notice), or by delivering personal property to the law practice's office.

2. APPOINTMENT OF ESCROW AGENT

- 2.1. The Donor appoints the law practice to act as an escrow agent on the terms and conditions of this agreement (agreement).
- 2.2. Guardian Wills & Probate accepts the appointment as an escrow agent and agrees to hold money or property in escrow; and
- 2.3. Guardian Wills & Probate will deal with and release the property from escrow on the terms and conditions of this agreement.

3. ACKNOWLEDGEMENTS AS TO CONFLICTS

- 3.1. The donors acknowledge that Gregson & Associates will continue to act for their client or clients notwithstanding any perceived conflict of interest created by their appointment as an escrow agent.
- 3.2. This agreement may be pleaded as a bar to any claim or application attempting to restrain Guardian Wills & Probate acting for their client.

4. NO IMPLIED TERMS AS TO ESCROW AGREEMENT

- 4.1. The donor acknowledges that no parole evidence or collateral agreement will apply to the escrow money or property and that any discussion and/or correspondence concerning the holding of money or property in escrow cannot be relied upon and/or alternatively will be read down, unless expressly included as a variation to this agreement by deed.
- 4.2. The Donor acknowledges that they have not relied on any promise, warranty, inducement or undertaking made by Guardian Wills & Probate to enter into this agreement.

5. USING ESCROW MONEY FOR ONGOING STATE COSTS AND DISBURSEMENTS

5.1. Guardian Wills & Probate is often appointed to act in a party's representative capacity (for example for the executor or administrator of an estate) in that case, escrow monies will be applied to the payment of estate expenses (both testamentary and non-testamentary) for example, Guardian Wills & Probate executor or administrator costs, municipal council rates, property insurances, accountants' fees or such other payment reasonably required to protect the estate property from waste or to discharge estate creditors.

5.2. Where Guardian Wills & Probate are acting for a client in a representative capacity and in a personal capacity, escrow money cannot and will not be used to pay the client's personal costs (for example as a beneficiary).

6. RELEASE OF ESCROW MONIES/PROPERTY

6.1. Guardian Wills & Probate will release and deal with escrow money and property strictly in accordance with the terms of this agreement; but is not liable at law or in equity (including for *Legal Professional Act 2008* (WA) or under the *Legal Profession Uniform Law* (basis) to the donor in respect to the release for any dealings with the escrow money or property where Gregson and Associates has acted within the terms of the Agreement.

6.2. Where the subject matter of the dispute, action or instructions concerns estate administration, estate litigation or any other dispute in law or in equity, upon the earlier of:

6.2.1. Written confirmation or agreement to fall of the parties to any dispute,

6.2.2. The conclusion of the action:

6.2.2.1. On the execution of a final distribution statement, or

6.2.2.2. A date expressed pursuant to the express terms of any deed of family arrangement/settlement and release, or

6.2.3. The termination of instructions given to Guardian Wills & Probate by their client, or

6.2.4. By Guardian Wills & Probate ceasing to act for their client,

6.3. Guardian Wills & Probate has a strict and unqualified right of election to:

6.3.1. Pay any or all of its outstanding accounts (without offset).

6.3.2. Return the escrow property to our client directly, unless ordered by the court (current orders which have not been dismissed or vacated), or unless directed by express terms of a deed of family arrangement or deed of settlement and release, or

6.3.3. Apply for interpleader relief under Order 17 Rule 1 of the *Rules of The Supreme Court of Western Australia 1971* (WA) for the payment of the escrow money or property into court or seek directions in respect of the payment of money or dealing with property under any other rule of the Court.

6.3.3.1. Pay the costs of any application by Guardian Wills & Probate concerning the escrow money or property from the escrow money or property itself on an indemnity basis.

6.3.4. Immediately return the escrow money or property to the donor or their agent who pays the money or deliver's possession of the escrow property to the law practice where the payee pays the money and then later refuse to be bound by the terms of this agreement.

7. NOTICE TO RELEASE

7.1. Guardian Wills & Probate will provide a written notice to the donor of its intention to deal with the escrow money or property after the expiry of 30 days from the date of service of the notice.

7.2. The Donor acknowledges that the time expressed in the notice is sufficient time for the Donor to make any application to the court, and sufficient time to obtain orders in respect of the same, directing how the escrow money or property is to be dealt with.

8. DUTIES, RESPONSIBILITIES, AND INDEMNITIES

8.1. Guardian Wills & Probate:

8.1.1. Is not required to use or advance its own funds or incur financial liability on its part in performance of its duties or the exercise of its rights under this agreement.

8.1.2. Will have no further duties or responsibilities under these Conditions following the release of the Escrow money or property.

8.1.3. Is not and must not be treated as being a trustee or fiduciary acting for the benefit of any of the parties.

8.1.4. Is not required in their position as an escrow agent to resolve the difference between the parties.

8.2. Guardian Wills & Probate is not liable for any error of judgement or for any acts done or steps taken or omitted by it in connection with this agreement, including the Guardian Wills & Probate own negligence or wilful misconduct.

8.3. The Donor (and/or the Donor's solicitor on instructions and with the authority of the donor) waives any claim which the Donor may have or may assert against Guardian Wills & Probate arising out of the execution, delivery, or performance by Guardian Wills & Probate of this agreement whatsoever.

8.4. The Donor (and/or the Donor's solicitor on instructions and with the authority of the donor) jointly and severally indemnify and hold harmless the Guardian Wills & Probate from any liabilities or claims (including reasonable legal fees and consequential losses) which Gregson & Associates may incur or sustain as a result of its performance under this Letter Agreement.

9. BAR TO PROCEEDINGS

9.1. Guardian Wills & Probate may plead or interplead this agreement as a bar to any claims touching on or incidental to this agreement.

9.2. The Donor will pursue any legal redress or recourse in connection with any dispute relating to the escrow arrangements contained in this Agreement, without making Guardian Wills & Probate a party. This agreement constitutes a written direction by the donor to deal with client trust money in

9.3. a particular way and, as such, this agreement will be disclosed in response to any professional complaint against Guardian Wills & Probate touching on or incidental to the client trust monies.

10. NOTICES

10.1. The donor and accepts service of notices under this agreement by email.

11. JURISDICTION

11.1. The donor submits to the exclusive jurisdiction of the Supreme Court of Western Australia.



GUARDIAN

WILLS & PROBATE

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