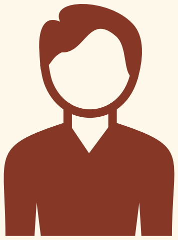
4 Steps to Identifying a Bare Trust

01 DEFINE YOUR LEGAL OWNER(S)



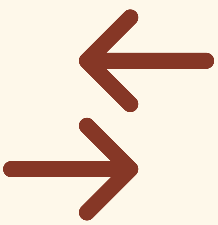
Look at the legal documents and determine the owner of the property or the holder of the account. These person(s) are your **legal owner(s).**

DEFINE YOUR BENEFICIAL OWNER(S) 02

Who stands to benefit from the sale of this property? Who's funds pay the costs to maintain it? This person or group of persons are your **beneficial owner(s).**

03 COMPARE

Compare the legal owner(s) from Step 1 and your beneficial owner(s) from Step 2. Do the names match? If the legal and beneficial owners are not the same, you likely have a trust relationship.



BARE TRUST OR REGULAR TRUST? 04

What's the difference? If the legal owner(s) has minimal rights and responsibilities other than to simply hold the title to the property and follow the direction of the beneficial owner(s), you are likely dealing with a Bare Trust.

Bare Trust Filing Requirements for 2024

WHAT IS A BARE TRUST?

Very generally, a bare trust is a way to hold a property where one person appears on legal documents for the property, but a completely different person gets to enjoy the benefits (and risks) of owning the property.

WHY DO PEOPLE USE BARE TRUSTS?

Creditor Proofing: A beneficial owner may want to limit the visibility of their asset for potential creditors by placing the asset legally into a family member's name.
Estate Planning: A common technique involves adding adult children to the legal title of parents' property for probate planning purposes while the parents retain all beneficial rights to the property.
Financing: Beneficial owner(s) may not qualify for financing for the purchase of a property whereas legal owners can help by obtaining mortgage and taking legal title in their name.
Business Logistics: In joint ventures, it's common for one joint venture partner to hold legal title for the benefit of all partners. The arrangement streamlines business dealings where only one partner can enter into contracts on behalf of others.

STEP 1 - DEFINE YOUR LEGAL OWNER(S)

Look at the legal documents for the property at issue and determine the owner of the property or the holder of the account. These person(s) are your **legal owner(s).**

<u>Where do you look to identify legal owners?</u>

- For real property - see purchase agreements and land title records.
- For equipment, and other assets - see purchase agreement, title documents.
- For accounts - see account holder agreements.

If someone simply has signing authority on a bank account, or someone is managing the asset/property under a legal power of attorney, the person is not necessarily the legal owner.

STEP 2 - DEFINE BENEFICIAL OWNER(S)

Imagine that one of the following scenarios happen to the asset/property:

- The property needs repairs;
- The property earns income;
- The asset is being sold/account is being closed and the funds withdrawn.

With reference to the above, ask yourself:

- Who would have to pay for the repairs/maintenance?
- Who pays the mortgage and property taxes?
- Who will keep the proceeds of the sale?
- Whose funds were used to purchase the property?

In most cases, you will use the same name or the same group of names to answer all the questions above, This person(s) is the **beneficial owner(s).**

STEP 3 - COMPARE

Compare your legal owner(s) established through Step 1 and your beneficial owner(s) from Step 2, do the names match?

If your legal owner(s) match your beneficial owners, you likely don't have any trust relationship. You are not subject to the new trust reporting rules.

If your legal owner(s) do NOT match your beneficial owners, you likely have a trust relationship that may be subject to the new trust reporting rules.

STEP 4 - BARE TRUST OR REGULAR TRUST?

If the legal owner(s) has minimal rights and responsibilities other than to simply hold the title to the property and follow the instructions of the beneficiary, you are likely dealing with a bare trust where;

- The legal owner(s) are the bare trustees
- The beneficial owner(s) are the beneficiaries

If the trustee has a wide range of rights and responsibilities (such as to invest the trust funds, to hire advisors and to make decisions on the distribution of the property, you likely have a regular trust that is not a bare trust. The terms of these trusts must be documented in a trust deed. The reporting rules for these trusts also expanded recently and you might want to seek advice is you are already a trustee of a regular trust,

WHAT'S NEXT?

Prepare yourself for the 2024 tax season by determining if a bare trust relationship exists for you. Consult your lawyer or tax professional for individualized advice.

For the 2024 and following taxation years, the CRA has purposed that trustees of Bare Trusts must file a T3 Trust Return in Canada or face penalties.

The annual filing deadline for T3 Trust Returns is March 31st, which is sooner than the filing deadline of April 30th for personal T1 Income Tax and Benefit Returns.

Sources:

"A Basic Guide on Bare Trusts for Canadian Taxpayers." Advotax Law. Accessed 03-30-2024, https://www.advotaxlaw.ca/post/a-basic-guide-on-bare-trusts-for-canadian-taxpayers.

"Canada Revenue Agency. 'Bare Trusts Exempt from Trust Reporting Requirements for 2023.' Tax Tips, 2024. Accessed 03-30-2024, https://www.canada.ca/en/revenue-agency/news/newsroom/tax-tips/tax-tips-2024/bare-trusts-exempt-from-trust-reporting-requirements-2023.html."