

# Declaration of Trust

## 1. Terms Used in this Agreement

Words and phrases used in this Agreement have the following meanings:

*Affiliate* means a company that is affiliated with another company as described below:

A company is an *Affiliate* of another company if:

- (a) one of them is the subsidiary of the other, or
- (b) each of them is controlled by the same person.

A company is "controlled" by a person if:

- (a) voting securities of the company are held, other than by way of security only, by or for the benefit of that person, and
- (b) the voting securities, if voted, entitle the person to elect a majority of the directors of the company.

A person beneficially owns securities that are beneficially owned by:

- (a) a company controlled by that person, or
- (b) an *Affiliate* of that person or an *Affiliate* of any company controlled by that person;

*Agreement* means the Application and this Declaration of Trust;

*applicable tax legislation* means the Tax Act and any applicable provincial tax legislation, as amended from time to time;

*Application* means your application for this FHSA;

*Arrangement* means a qualifying arrangement under section 146.6 of the Income Tax Act (Canada);

*FHSA* means a First Home Savings Account (FHSA) that has been registered under the Tax Act;

*Fiscal Year* means the fiscal year of the FHSA. It ends on December 31 each year and shall not exceed 12 months;

*Holder* means you, the individual who entered into the arrangement, and any designated successor holder (also see *Qualifying Individual*);

*Issuer, we, our and us* means The Bank of Nova Scotia Trust Company;

*Marriage Breakdown* means divorce, annulment of your marriage, separation for the period of time required by any applicable legislation or, in the case of unmarried spouses, when you stop living together;

*Maximum Participation Period* means the period during which an individual may have a FHSA. An individual's maximum participation period begins when the individual opens their first FHSA and ends on December 31<sup>st</sup> of the year after the year in which the earliest of the following events occurs:

- the 14<sup>th</sup> anniversary of the date the individual first opened their FHSA,
- the individual turns 70 years old, and
- the individual first makes a *Qualifying Withdrawal* from a FHSA;

*Plan* means your FHSA;

*Qualifying Home* means a housing unit located in Canada which includes a share of the capital stock of a cooperative housing corporation that entitles the taxpayer to possess, and have an equity interest in, a housing unit located in Canada;

*Qualifying Individual* means an individual who

- is at least 18 years old,
- resident in Canada and
- did not, at any prior time in the calendar year or in the preceding four calendar years, inhabit as a principal place of residence a *Qualifying Home* (or what would be a qualifying

home if it were located in Canada) that was owned, whether jointly with another person or otherwise, by the individual, or a person who is the spouse or common-law partner of the individual, at the particular time;

*Qualifying Withdrawal* means an amount received at a particular time by the individual as a benefit out of or under a FHSA if

- the amount is received as a result of the individual's written request in prescribed form in which the individual sets out the location of a *Qualifying Home* that the individual has begun, or intends not later than one year after its acquisition by the individual to begin, using as a principal place of residence;
- the individual
  - (i) is a resident of Canada throughout the period that begins at the particular time and ends at the earlier of the time of the individual's death and the time at which the individual acquires the *Qualifying Home*, and
  - (ii) does not have an owner-occupied home within the meaning of paragraph 146.01(2)(a.1) of the Tax Act in the period that begins at the beginning of the fourth preceding calendar year that ended before the particular time, and the period that ends on the 31<sup>st</sup> day before the particular time;
- the individual entered into an agreement in writing before the particular time for the acquisition or construction of the *Qualifying Home* before October 1 of the calendar year following the year in which the amount was received; and
- the individual did not acquire the *Qualifying Home* more than 30 days before the particular time.

*Registered Retirement Savings Plan (RRSP) and Registered Retirement Income Fund (RRIF)* means a retirement savings plan (RSP) and a retirement income fund (RIF), respectively, that have been registered under the Tax Act;

*Tax Act* means the *Income Tax Act* (Canada), as amended from time to time; and

*you and your* means the Holder.

## 2. Registration

We will apply in accordance with applicable tax legislation to register as a FHSA the account requested on your Application. We agree to accept the position of trustee of the requested account once we have received your completed Application.

## 3. Purpose

The purpose of the FHSA is to provide you with a tax-free savings vehicle to facilitate the purchase of a *Qualifying Home*. All funds contributed or transferred to the FHSA including all income, investments, interest and gains, will be held in trust by us in accordance with this Agreement and applicable tax legislation.

Your FHSA is maintained for your exclusive benefit (determined without regard to any right of a person to receive a payment out of or under your FHSA on or after your death).

## 4. Contributions

You can deposit amounts to your FHSA in a single payment or in periodic payments up to the maximum contribution permitted by the Tax Act. You are responsible for determining the maximum permitted contribution to your FHSA in any tax year. No one other than you is permitted to make contributions to your FHSA. We will not accept contributions or transfers to your FHSA after December 31 of the year you turn age 71. Any amounts that we cannot process or are that are not accepted by us will not be considered to be a contribution to your FHSA.

## Declaration of Trust (continued)

### 5. Sources of Funds

Cash, mutual funds or other investments transferred to the Plan must be qualified investments within the meaning of the applicable tax legislation.

All amounts transferred to your FHSA must come from:

- another FHSA you own;
- an RRSP you own, subject to the FHSA annual and lifetime contribution limits and the qualified investment rules.
- an FHSA of which your spouse or former spouse is an owner, as part of a judgment of a competent tribunal or written separation agreement relating to the division of property following Marriage Breakdown;
- other sources that may be permitted from time to time by the applicable tax legislation.

### 6. Investments

You may invest your funds in any investment permitted and not specifically prohibited by the Tax Act and which is permitted by us.

To do so, you must tell us how you want your funds to be invested. We may require you to provide such documentation in respect of any investment or proposed investment, as we in our sole discretion deem necessary in the circumstances. You have a responsibility to determine whether any investment is a qualified investment or a prohibited investment. We will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the FHSA holds a non-qualified investment under the Tax Act.

We reserve the right to refuse instructions with respect to making any investment in our absolute discretion and reserve the right to require that you provide in a manner satisfactory to us, information to establish the market value of the assets included in the investment (including but not limited to any shareholders' agreements and any audited financial statements) and information required in our absolute discretion to ensure compliance with the Tax Act, applicable laws, and other rules with respect to investments (including, but not limited to, anti-money laundering legislation).

You may appoint an agent, satisfactory to us, to give us your investment directions which we may act on without incurring any liability. No one other than you or us has any rights under your FHSA relating to the amount and timing of distributions and investing of funds.

You may transfer funds from your RRSP, provided this is permitted by applicable tax legislation, the terms of the investment and the terms of your RRSP. Although such a transfer would be subject to FHSA contribution limits, it would not be deductible and would also not reinstate your RRSP contribution room.

We will keep legal ownership and possession of the investments in your FHSA in whatever form we determine.

We may calculate interest on investments in your FHSA, and credit it to your FHSA, more frequently than we tell you when you complete the Application. All interest and income earned by the investments is credited to your FHSA.

Unless you give us instructions, we are not obliged to exercise voting rights with respect to the investments in your FHSA.

### 7. Valuation

Your FHSA is worth the total market value of all of its assets. The market value of a Guaranteed Investment Certificate in your FHSA is the original face value of the investment plus compounded interest, as well as any accrued interest. In the case of a cash balance, the market value is the current balance plus accrued interest. Accrued interest is included whether or not it has been credited.

The market value of other investments held in your FHSA is determined by general industry practices.

We calculate the value of your FHSA at the end of the last business day of the Fiscal Year, on the date of permitted withdrawal, on the date of your death and at such other times as we deem appropriate. Our valuation is conclusive and binding.

### 8. Withdrawals

You may receive a payment out of or under your FHSA to acquire the Qualifying Home.

The withdrawal is requested via a prescribed form that sets out the location of the Qualifying Home that you occupy, or intend to occupy within one year of purchase, as a principal place of residence.

You must be a resident of Canada at the time of the withdrawal to acquire the Qualifying Home and you must not have owned (jointly with another person or otherwise) a home (or a share of the capital stock of a cooperative housing corporation giving you the right to inhabit a housing unit owned by the corporation) which is your principal place of residence at any time during the period from the beginning of the fourth calendar year prior to the year of withdrawal and ends 31 days prior to the date of withdrawal.

Before the withdrawal, an agreement must be in place to purchase or construct the Qualifying Home before October 1 of the year following the date of the withdrawal. You cannot have acquired the Qualifying Home more than 30 days before the withdrawal is made.

Before we process a payment out of your FHSA, you must complete the prescribed form acceptable to us. In order to accommodate your payment instructions, we may have to liquidate or sell all or part of one or more of your investments prior to the maturity date of the investment(s). We assume no liability for any losses that result.

In the event a non-qualifying withdrawal is made, the withdrawals would be included in the income of the individual making the withdrawal.

We are required to collect and remit withholding tax on non-qualifying withdrawals in accordance with applicable tax legislation. Non-qualifying withdrawals do not re-instate either the annual FHSA contribution limit or any lifetime FHSA contribution limit.

### 9. Transfers

Upon your written instruction, we shall transfer all or any part of the property held in connection with your FHSA (or an amount equal to its value) to another account that you hold. Before we make a transfer, you must give us any documents we may require. In the event you seek to transfer some, but not all, of the assets in the Plan in accordance with the provisions herein, we reserve the right to require that all assets or certain assets other than those requested by the Holder be transferred.

In order to accommodate your transfer instruction, we may have to liquidate or sell all or part of one or more of your investments prior to the maturity date of the investment(s). We assume no liability for any losses that result.

You can transfer funds from an FHSA to another FHSA, an RRSP or a RRIF on a tax-free basis under the Tax Act. Funds transferred to an RRSP or RRIF will be subject to the usual rules applicable to these accounts, including taxability upon withdrawal. These transfers would not reduce, or be limited by, your available RRSP contribution room. These transfers do not reinstate your FHSA lifetime contribution limit.

You are also allowed to transfer funds from an RRSP to an FHSA on a tax-free basis, subject to the FHSA annual and lifetime contribution limits and the qualified investment rules under the Tax Act. Although such transfers would be subject to FHSA contribution limits, they would not be deductible and would also not reinstate your RRSP contribution room.

## Declaration of Trust (continued)

### 10. Maturity of your Plan

Your plan will cease to be an FHSA, and you will not be permitted to open any other FHSA, after the earliest of the following events occurs (the "maturity date"):

- The FHSA must close by December 31<sup>st</sup> of the year after the year of the 14th anniversary of the FHSA opening (or must be closed by the end of the 15<sup>th</sup> year)
- The FHSA must close by December 31<sup>st</sup> of the year after the year you turn 70 (or must be closed by the end of the year you turn 71)
- The FHSA must close by December 31<sup>st</sup> of the year after the year in which you **first** make a qualifying withdrawal from an FHSA
- The end of the year following the year of the death of the last holder
- The FHSA must close at the time at which the arrangement ceases to be a qualifying arrangement
- The FHSA must close at the time at which the arrangement is not administered in accordance with the conditions in subsection 146.6 (2) of the Tax Act

Any amounts in your FHSA not used to purchase a Qualifying Home could be transferred, on or before December 31 of the year following the year of the first Qualifying Withdrawal from an FHSA, on a tax-free basis to your RRSP or RRIF, or could be withdrawn on a taxable basis. If the FHSA is not closed by its maturity date, it will cease to be an FHSA and there will be a deemed income inclusion to the Holder equal to the fair market value of the assets of the FHSA immediately before that time.

At least 60 days prior to the Maximum Participation Period (or any lesser number of days that we, in our sole discretion, permit), you must provide us with written instructions to transfer the FHSA assets to a RRSP or RRIF. If you fail to provide us with written instructions, we may, in our sole discretion, close your Plan, sell any investments and transfer the proceeds to an interest-bearing deposit account established for you with Scotiabank and its Affiliates. You will be responsible for all applicable taxes and any related administration expenses. We may also, in our sole discretion, transfer your Plan to any existing RRSP or RRIF trustee by the Trustee in respect of which you are the holder. You appoint us as your attorney, or agent, as applicable, to facilitate any such transfer.

### 11. Estate Matters

In your will, you may designate your surviving spouse or common-law partner as the successor holder of your FHSA in the event of your death. Alternatively, in provinces where it is allowed, you may designate your successor holder on a form acceptable to us and in accordance with applicable provincial legislation. Inheriting an FHSA in this way does not impact the surviving spouse's contribution limits. If the surviving spouse is not eligible to open an FHSA, amounts in the FHSA could instead be transferred to an RRSP or RRIF of the surviving spouse, or withdrawn on a taxable basis.

Unless you have designated a successor holder as indicated in the first paragraph of this Section 11, when you die, the funds in your FHSA would need to be withdrawn and paid to the beneficiary. Amounts paid to the beneficiary would be included in the income of the beneficiary for tax purposes. The payment may be subject to withholding tax.

You may designate your beneficiary in your will or by another form acceptable by us and permitted by applicable law. You can change or revoke your designation at any time.

We will make payment to the most recently designated beneficiary of which we have notice, if you have made designations more than once.

If you do not have a successor holder and (i) you do not designate a beneficiary, (ii) your beneficiary dies before you, or (iii) your beneficiary designation is not permitted under applicable law, we will pay the funds held in your FHSA to your estate.

If there are multiple beneficiaries designated and any of them predeceases you, their percentage interest in the monies payable under the FHSA upon your death shall be payable in equal shares to the beneficiaries living at the time of your death. If all the designated beneficiaries predecease you, all monies payable under the FHSA upon your death shall be paid to your estate.

If the FHSA is not closed by the end of the year following the year of your death, it will cease to be an FHSA. There will be a deemed income inclusion in the hands of the beneficiary(ies), if any, or estate equal to the fair market value of the assets of the FHSA immediately before the cessation of the account. If you designate multiple beneficiaries of your FHSA, and any of them predeceases you, their percentage interest in the monies payable under the Plan upon your death shall be payable in equal shares to the then remaining beneficiaries living at the time of your death. If all the designated beneficiaries predecease you, all monies payable under the Plan upon your death shall be paid to your estate.

Before we make any payment, we need proof of your death and may need other documents. We will deduct any applicable taxes, fees and expenses from the payment.

### 12. Contributions While Non-Resident

It is your responsibility to determine whether you have made a contribution to your FHSA at a time when you are a non-resident of Canada for income tax purposes. If a contribution is made at a time you are non-resident, it is your responsibility to file the proper tax return and taxes in accordance to the Act. You may contribute to your FHSA after emigrating from Canada but cannot make a Qualifying Withdrawal as a non-resident.

Withdrawals from your FHSA while you are non-resident will be subject to applicable withholding tax.

### 13. No Carrying on Business

You agree not to provide any instructions or series of instructions that could be constituted as using your FHSA to carry on a business for the purposes of the Act. This includes, but is not limited to, using your FHSA for securities trading that may constitute carrying on a business under the Act.

### 14. Failure To Be a FHSA

Your account will not qualify as a FHSA until it is registered under the Act and will not qualify for tax benefits until the registration is in compliance with the Act. In the event your Account is not registered, all contributions will be held in an interest-bearing unregistered account and you will be responsible for any taxes owed on interest earned.

### 15. Third Party Demands

We are entitled to be indemnified out of the property in your FHSA in respect of any costs, expenses, charges or liabilities that may arise out of our good faith compliance with any law, regulation, judgment, seizure, execution, notice or similar order or demand which lawfully imposes a duty to take or refrain from taking any action concerning the account or its property. We retain the ability to restrict trading upon receipt of such an order or demand and are not liable for any decreases in account value during this period.

### 16. Proof of Information

You certify the accuracy of all of the information you have given us in your Application, including all birth dates, and you agree to give us any further proof that we may need.

As prescribed by the Tax Act, the account holder must be at least 18 years of age at the time this Agreement is entered into.

## Declaration of Trust (continued)

### 17. Fees and Expenses

We are entitled to receive fees and to recover all reasonable expenses for the administration of your FHSA. We tell you what our fees are when you apply to open your FHSA. We may change them from time to time and, if we do so, we will advise you before the new fees go into effect.

Our fees and expenses and those of our agent as well as any applicable taxes may be deducted from the funds in your FHSA, unless prohibited by the Tax Act.

### 18. Amendments

From time to time, we may amend this Agreement, with the concurrence of regulatory authorities if required. We will give you 60 days notice in writing of material changes. No amendment, however, will disqualify your FHSA as a FHSA. If an amendment results from changes to the Tax Act, this Agreement will be considered to be automatically amended and we will not be required to tell you about it in advance. Nor will we be required to tell you about changes to investment options that do not affect the investments in your FHSA.

### 19. No Advantage

No advantage, as defined under paragraph 207.01(1) of the Tax Act, may be extended to you or any person with whom you are not dealing with at arm's length.

### 20. Statements

We will give you at least quarterly a statement for your Plan. The statement will show the following information since your last statement:

- amounts contributed or transferred to your Plan, their source, the accumulated earnings and the fees charged;
- cost and current value of your investments;
- proceeds from the sale of your investments.

If you transfer funds in the Plan, we give you the same information, determined at the date of the transfer.

If you die, the information is determined at the time of your death and given to the person entitled to receive the balance of your Plan.

### 21. Our Right to Appoint an Agent

You authorize us to delegate the performance of our duties under this Agreement to an agent or agents that we choose. We acknowledge, however, that the ultimate responsibility for the administration of your FHSA is ours.

### 22. Resignation

We may resign from our duties under this Agreement by giving you 90 days' notice in writing. If we resign, we will transfer the balance of your FHSA to another Issuer that we choose. We will give the other Issuer all the information necessary for the administration of your FHSA within 90 days of notifying you of our resignation.

### 23. Assignment

We may assign our appointment and duties under this Agreement to another trust company, subject to applicable tax legislation. You may not assign any part of your FHSA, or pledge or alienate the FHSA property as security.

### 24. Notice

To give us notice about anything relating to this Agreement, write us at the branch location indicated on the FHSA account statement. We consider that we have received your notice on the day it is actually delivered to us.

If we send you a notice, statement or receipt, we consider that you have received it 48 hours after we have mailed it to you at the last address that we have for you in our records, or, if you have agreed to receive electronic communications in connection with the Plan, we consider that you have received it on the day of receipt if sent before 5 p.m. (local time of the recipient) on a business day or on the next business day if sent after 5 p.m. or not on a business day.

### 25. Instructions

We shall be entitled to rely upon instructions received from you. We may, without incurring any liability to you or any other person, decline to act upon any instruction if the instruction is not given in a timely manner, is not in writing where we require it, is not in a form or format which we require, or in the opinion of us is not complete or otherwise does not comply with our other requirements at such time, or if we have any doubt that the instruction has been properly authorized or accurately transmitted. References to "we" and "us" includes our agents.

### 26. Indemnity

You and your respective heirs and personal representatives shall indemnify us for any government charges imposed on your FHSA or the payments made from it as well as for any other charge or liability which we may incur as a result of our undertaking our obligations under this Agreement, unless prohibited by the Tax Act.

We are not responsible for any losses incurred by the FHSA or for any reduction in the value of the FHSA, except if due to our own negligence, deliberate wrongdoing.

### 27. Governing Law

This Agreement is governed by applicable tax legislation and by the laws of Canada and the jurisdiction of your branch of account.

It is to be interpreted in accordance with those laws.

If any part of this Agreement is found invalid or unenforceable, this will not affect the validity or enforceability of the remaining provisions of the Agreement.

### 28. Language

The parties hereto have required that this Agreement and all documents and notices resulting therefrom be drawn up in English. *Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en la langue anglaise.*