Holt Norman Ashman Baker Action Group (**HNAB-AG**)
PO Box 5043, Moreland West LPO
MORELAND WEST VIC 3055
www.halttosafeguardyourfinances.com
Email: hnabactiongroup@gmail.com

NEGOTIATING KORDAMENTHA'S DEED OF SETTLEMENT FOR TIMBERCORP – ADDRESSING SERIOUS CONCERNS

➔ INDIVIDUAL CASES: REGARDING COURT ACTION

Legal advice is that in the event of having to go to court, it is likely mediation would be ordered. This process would permit the right to state your case on a without prejudice basis i.e. the general rule is that what is said at a mediation cannot be used against each party at a later time and the mediation is confidential. Importantly, the conduct of KordaMentha would be brought to light as well as the terms of the proposed settlement. The view is KordaMentha would want to avoid any such negativity and that the court would take a dim view the liquidator (a self-named officer of the court) would bring the court and its process into disrepute for the delaying and intimidation tactics used.

➔ In a nutshell: DEED OF SETTLEMENT (DOS) PROBLEMS

A. Aside from choosing not to accept testified guidance from vote-carrying creditor ANZ to write-off deceptive placement in debt of Timbercorp-Holt victims, or to honour Mark Korda's senate testimony, **KordaMentha has a responsibility to ensure, legally and ethically, its Deed of Settlement for Timbercorp reflects**:

1) the alleged debt has not been proven and is disputed (is settled only to end action)
2) accuracy of all statement of facts - not merely regarding financial data provided to the liquidator or hardship program or information pertinent *only* to KordaMentha
3) statements or acknowledgements about which victims are in a position to confirm - rather than requiring people to accept or agree to a view or information claimed only by the liquidator to be true
4) unambiguous unequivocal clarity about all aspects of facts, including closure and certainty of the settlement as complete and final
5) the financial settlement terms are subject to confidentiality not the experience with KordaMentha / its associates in concluding placement in deceptive Timbercorp debt.

B. **Written retrospective assurance for Holt-Timbercorp victims who signed the Deed prior to amendments** must be honoured by KordaMentha as committed to in 2016. Without KordaMentha honouring commitments made or accepting creditor guidance to write-off Holt-Timbercorp deceptive debt, given the system as its stands, victims have had no genuine choice other than to sign under duress fearing threatened court action.

You CAN trust truly independent legal and industry advice below

How to ensure a Deed protects you is outlined:
READ CAREFULLY to ensure you will be protected.

Background information at the end places matters in context.

Safeguard yourself against serious concerns in KordaMentha's DEED of SETTLEMENT

KordaMentha has misled Timbercorp victims to believe provision of various documentation is a legal requirement to settle when, in fact, it is **NOT AN OBLIGATION**. The liquidator, Craig Shepard, has imposed conditions and demands **NOT REQUIRED LEGALLY**. He has ignored ANZ's guidance about Timbercorp-Holt victims, refusing to exercise his discretion under statutory obligations to write-off deceptive placement in these debts. Nor has he honoured relevant senate testimony provided by KordaMentha co-principal, Mark Korda. KordaMentha and the Hardship Program and associates, claim the DOS to be *"standard"* – however, Craig Shepard has clarified it to mean standard only *for KordaMentha*. Others DOSs do not insist on, or entail, similar demands.

Genuinely independent lawyers and liquidators agree with, and/or raise, the following:

Accuracy

The Recitals in the Deed (and all aspects of it) should reflect accurately and truthfully relevant facts particularly in light of the background details, but also as legal requirement from an ethical standpoint:

1) A person cannot reasonably or ethically be considered a '**borrower' or 'investor**' if he or she:
   (a) was not aware a loan/s even existed at all
   (b) did not receive accurate, meaningful informed consent but was subjected to deception and/or negligence
   (c) did not meet the loan application's stated criteria for acceptance i.e. including it be completed in full.

   Being unaware the advice was incentivised by conflicted remuneration adds to unconscionable conduct along with failure of due diligence. It is a serious abuse of power inherent in the situation. It is reasonable to expect to trust payment for services meant acting in the client's interest (not the accountant / advisor or lender or product issuer). This includes 'expertise' in preparing and executing loan applications and documents (where a loan was known to exist).

   As an analogy, it is not acceptable to call a rapist the victim's 'lover' or 'sexual partner.' A burglar or home invader is not a 'house guest.' The same logic and respect should apply to the Deed.

   If the term 'borrower' is used it should be defined at the outset as including people placed deceptively or unknowingly in loan/s who dispute a debt is owed but do not have the resources or confidence in the legal system to take the case to court and where the liquidator will not exercise discretionary authority to write-off alleged debt.

   Concerns regarding terminology have been outlined to KordaMentha in writing and in person with particular focus in 2016. For example, the liquidator being able to

"*enjoy* (the right to take action)" instead of "exercise" rubs salt into wounds of victims of white-collar crime.

(Note - ASIC notes in banning Peter Holt he failed to comply with numerous financial services laws or to have a reasonable basis for the 'advice' given including MIS.)

2) **The Deed should reflect the debt is 'alleged' by KordaMentha and is disputed by the individual**. The liquidator has NOT proven a debt is owed. Hence, accuracy requires this be reflected in the Deed. It is a violation of the law to falsify information yet victims are being placed under extreme duress to do so by signing under the threat of court. Ironically, people have been forced to commit this breach to end their anguish and fear. It makes a mockery of the law. It disrespects victims of abuse of power structures demanding they sign agreement to false statements. People can truthfully accept it as an *'alleged'* debt for the purposes of settling to avoid threatened legal action. It is INACCURATE to say people enter into the Deed *"freely and voluntarily"* – people are constrained as the liquidator asserts a debt exists in their name and court is threatened.
(Further, KordaMentha's so-called *'free, independent lawyer'* **John Berrill** does NOT provide legal advice in people's best interests regarding the Deed.)

3) **Clarity as to how a debt is calculated**. It is reasonable to ask KordaMentha to provide a statement and calculations to support the alleged debt amount. It should be referred to as the alleged total and the alleged liability / settlement sum. It should include all monies alleged to be owed including management or other fees and cover TFL, TSL and the entire Timbercorp Group.

4) **The relevant company under which Peter Holt operated in relation to placing the victim in the loan/s should be listed**. It is not factually correct to state it is 'Holt Norman Ashman Baker' when it should say Holt Norman & Co (or whatever may be the case for an individual). Technically signing a DOS with this false detail is a breach of the law as it is agreeing to false information. It may result in not protecting people if such technicalities are used against them – disturbingly, something which has caused immeasurable trauma, financially and emotionally, for thousands of victims of white-collar crime.

5) **GST** should be stated as inclusive or that it is not applicable.

6) **The alleged Settlement amount should be clearly stated and unambiguous** throughout the Deed. The 'liability' should be the agreed settlement sum – NOT the total KordaMentha alleges is owed.

7) **Dates** should be consistent and not contradictory e.g. for when payment is due; expiration of a caveat if imposed; etc. (Note – *when caveats begin RETROSPECTIVELY* in DOS the date should be clear. Also the date or timeframe (within 14 days) should be clear as to when KordaMentha will arrange the *withdrawal of Caveat* on expiry.)

8) **Relinquishing the right to pursue action against KordaMentha should not prohibit the right to pursue a future claim** through any *retrospective financial redress scheme of last resort* for restitution (of direct, indirect and compounding losses) and compensation (for incalculable losses and pain and suffering). Craig Shepard has

stated KordaMentha would not deny Holt victims pursuing such a claim. This must be reflected in the Deed. (Note: other assurances have not transpired.)

9) **Other facts** may relate to individual Deeds and should be carefully considered e.g. listing of your correct legal representative if any; clauses should not contradict other clauses; etc.

Closure and certainty concerns

1) **Clarity of Confidentiality Clause**. Imposing confidentiality or secrecy contradicts Mark Korda's public statement (along with other key dishonoured commitments made in senate testimony). However, if imposed, it must not include the right to speak about the ***individual's experience*** without fear of his or her case being re-opened. Confidentiality of the settlement ***amount and related terms*** is one thing but permitting the liquidator to re-open a case (and seek the whole amount plus penalty interest to that point in the future) if merely of the opinion that information, or comments made by the individual would discredit or tarnish KordaMentha's reputation or their associates, is entirely another – and not reasonable or standard practice.

2) **Your right to a defence should KordaMentha deem a breach has occurred**. The Deed should not require people to relinquish their right to defend themselves particularly while preserving KordaMentha's rights or those of its associates. As it stands KordaMentha could legally, technically, reopen a case years from now demanding the full alleged debt plus penalty interest covering all intervening years.

3) **Liquidators can sue in a separate proceeding if evidence exists**. Due process should occur if KordaMentha has evidence – not a mere whim – that a case should be re-opened. This requires taking actions to sue the person in court thus permitting him or her a defence.

4) **Registering withdrawal of a caveat by KordaMentha should be automatic on expiry**. The Deed should reflect KordaMentha is responsible within 14 days, once the period of any caveat imposed expires, to take all necessary actions to remove it. It should not require the victim to have to take any steps or expense to initiate or prompt complete removal of a caveat demanded by the liquidator to settle. This relates to having regard to recent changes in the practicality of registering a Withdrawal of Caveat in Victoria. If a caveat needs to be registered, it should be for the same period as any repayment program i.e. where any money to be paid is demanded in addition to the caveat.

   BE AWARE: KordaMentha has demanded CAVEATS for 1-5 years with no apparent consistency – indeed to the contrary. It appears to be a retaliatory tactic at times. **NOTE (clarification)** - It is reasonable the period originally accepted for the caveat is reduced in accordance with time passed where a delay (e.g. months or years) occurs before a DOS is executed. Monetary payment as well as a caveat is not always imposed.

5) **Finalization, Certainty and Closure**. The Deed must provide clarity that upon signing the matter is complete and closed and will not be re-opened thus ensuring finality.

6) **Eligibility for Future Retrospective Financial Redress Scheme**. The liquidator has previously agreed people will not be precluded from seeking redress (restitution and compensation) for losses and impacts related to Timbercorp and dealings with Peter Raymond Holt's office.

Related outstanding commitments regarding the Deed

1) **Finalization of the Deed Amendments in relation to the concerns outlined including at the meetings in June 2016**. The MIS senate inquiry recommended KordaMentha work with HNAB-AG to resolve concerns. Craig Shepard refused any further negotiations a few months after the June 2016 meetings over the Deed. His commitments made at the time have not been fulfilled. The Hardship Program advocates have not taken up these issues to our knowledge. The current advocate, Sigrid Haslam, has appeared unaware of the specific concerns. These should be on record and accessible to her and all related staff.

2) **Commitment agreed to a letter applying Deed Amendments to Holt-victims who have already signed a Deed** has not been provided. This included clarity the Deed provides closure. Craig Shepard promised this is 2016.

KordaMentha's Deed of Settlement for Timbercorp should reflect the above as a matter of accuracy in statement of fact, certainty and closure.

These concerns add to, and underscore, the need for a Royal Commission into liquidator KordaMentha.

Background - acknowledged by KordaMentha as relevant to Timbercorp-Holt victims yet ignored despite legal power

Victims of white-collar crime had the reasonable expectation they could trust expert explanations, interpretations and advice and that industry conduct would be ethical.

Some 500 Timbercorp-Holt victims (along with many other industry collaborations with Peter Holt such as ***Bankers Trust***) discovered, with devastating personal as well as financial consequences, they had been subjected to extraordinary deception and gross negligence.

Respect for dignity, and compassion for severe trauma, typically is not evident from KordaMentha or its Hardship Program's so-called 'independent' advocates and lawyers. They encourage, or place duress on, victims to sign legal documents containing errors in statement of fact and without providing certainty or closure of the case.

The devil is in the detail in complicated technicalities at times. Sometimes detail is outright ignored by industry when it suits to take advantage of, or disregard, people rendered powerless. KordaMentha dismiss the fact **Timbercorp's specific loan application criteria states an application would not be accepted unless completed in full** – which typically did not occur.

Third parties completing and submitting applications should have been cause for greater scrutiny. These accountants / advisors were heavily incentivized with large commissions and conflicted remuneration to obtain as many "investors/borrowers" for Timbercorp as possible. In turn, KordaMentha benefits financially in pursuing these victims. Massive profits have been made for the liquidators, their lawyers and creditors.

Informed consent and due diligence did not occur. Had simple ethical measures been in place, extreme trauma – including high levels of suicidality - would have been minimized if not eliminated. Files have not been available or provided by KordaMentha. Timbercorp insiders report data shredding and not backing up computers in 2008 prior to collapse. KordaMentha and others were active at that point prior to being appointed liquidators.

KordaMentha liquidator Craig Shepard exacerbates impacts in refusing to exercise his discretionary authority under statutory obligations to fully compromise (write-off) placement in deceptive debt. This is despite it being supported for Holt-victims by largest vote-carrying creditor ANZ in testimony to the *1st Annual Bank Review*. In addition, co-principal Mark Korda's specific commitments in testimony to a senate inquiry include related aspects and continue to be dishonoured (detailed at length elsewhere).

People have been put through an extraordinarily protracted and inhumane ordeal since April 2009 when Timbercorp went into liquidation. It has had far-reaching intergenerational impacts on every level of life. Cases have dragged on for years unnecessarily. The tactic appears to be wear-down, intimidate, bully. Illness, terminal disease, pregnancy, being orphaned, forced relocation of families losing support systems at a time of shock and turmoil and severely impacting children, divorces related to this trauma, family crises, suicidality (including some disclosed attempts) etc. have drawn little or no concern.

The eventual resignation of the first so-called "independent hardship advocate" Catriona Lowe, citing concerns about inconsistency in a *'significant minority'* of cases did not result in ANZ demanding independent scrutiny of concerns. These had long been reported by HNAB-AG directly to Deputy CEO, Graham Hodges.

Stephen Blyth, the second advocate, participated in 2 meetings regarding the Deed facilitated by former senator Nick Xenophon and involving HNAB-AG representatives, many members and KordaMentha. Mr Xenophon's repeated assurance of commitment to assist - including until February 2018 - did not eventuate. In the 1.6 years Mr Blyth ran the Hardship Program, he did not ensure the Deed was finalized despite expressing to victims his agreement accuracy was non-negotiable. He resigned 31 December 2017 having stated at commencement of the role he saw no circumstance under which he would resign.

The third advocate, Sigrid Haslam commenced 1 January 2018. She repeatedly asks people to provide information previously documented and to clarify their concerns about the Deed. It is unclear whether KordaMentha has not provided these details, or has removed documents from the Hardship Program records, or if Ms Haslam has not asked for these once advised by people in the Hardship Program (rebranded as the *Borrower Assist Program*) on her inquiries about their DOS concerns. Clear details were provided in 2016.

HNAB-AG Chair, Susan Henry
Date: September 2018
(Note – clarification re **caveats** added)