



A BASIC GUIDE TO  
**TRUSTS LITIGATION**



# INTRODUCTION

**Trusts** are widely used in South Africa as estate planning tools, mechanisms for asset protection, and vehicles for preserving intergenerational wealth.

While they can offer significant benefits, they require proper administration, transparency, and accountability. Disputes often arise when these duties are neglected or relationships between trustees and beneficiaries deteriorate.

**Trust litigation** has become increasingly common in South Africa, particularly in the context of family trusts and high-value estates. Typical matters include disputes over trustee misconduct, failure to account, deadlocks between trustees, and disagreements over the rights and entitlements of beneficiaries.

# INTRODUCTION

This guide is designed to provide a practical overview of the legal principles governing trust administration and the resolution of trust disputes. It is intended for:



...seeking clarity on their legal obligations and potential risks; and

**Beneficiaries** concerned about mismanagement or exclusion from trust benefits;



# INTRODUCTION

Drawing on the provisions of the **Trust Property Control Act 57** of 1988 and established best practices, this guide will assist you in understanding your rights, obligations, and options when dealing with a trust-related dispute.

Whether you are a trustee facing **removal of a beneficiary** seeking enforcement of your rights, this guide will help you navigate the complex landscape of trust litigation in South Africa.

If you are involved in a trust dispute or require clarity on your position, we strongly recommend consulting with one of our attorneys for tailored legal guidance.

***Please note: This guide is provided for general educational purposes only and does not constitute legal advice. Each trust dispute is unique and must be assessed on its own facts and legal merits.***



**Money is a mindset**

Unknown

# UNDERSTANDING THE BASICS

## What is a trust?

A trust is a legal arrangement in terms of which one party (the **founder**) transfers property to another (the **trustee**) to be administered for the benefit of one or more **beneficiaries** or for a specified purpose. The terms and conditions of the trust are set out in a written document known as the **trust instrument**.

The legal definition of a trust is contained in section 1 of the **Trust Property Control Act 57 of 1988**, which provides that trust property is administered or disposed of by a trustee in accordance with the trust instrument, either:

- for the benefit of designated beneficiaries; or
- for the achievement of a specific lawful objective.

A key feature of a trust is that ownership and control of the trust property are separated. The trustee has control but must manage the property in good faith and in the best interests of the beneficiaries.

# TYPES OF TRUSTS

There are several different types of trusts recognised in South African law, including but not limited to:

- **Inter vivos trusts** – created during the lifetime of the founder, usually through a trust deed.
- **Testamentary trusts** – created in terms of a will and come into effect upon the death of the testator.
- **Discretionary trusts** – give trustees the discretion to determine how and when benefits are allocated to beneficiaries.
- **Vesting trusts** – the rights of beneficiaries are fixed in the trust deed; trustees have limited discretion.

## KEY ROLE-PLAYERS IN A TRUST

- **Founder:** The person who creates the trust and sets out its terms.
- **Trustee:** The person or persons appointed to administer the trust. Trustees are required to act with care, diligence, and in the best interests of the beneficiaries at all times. They must be formally authorised by the Master of the High Court in terms of section 6 of the Act before they may act.
- **Beneficiaries:** The individuals or class of persons entitled to receive benefits from the trust. Beneficiaries may be identified by name or description and may have either discretionary or vested rights.

# UNDERSTANDING THE BASICS

## The Trust Instrument

The trust instrument (also known as the trust deed) sets out the terms under which the trust is to be administered. It typically includes:

- The objectives of the trust
- Details of the founder, trustees, and beneficiaries
- Powers and duties of trustees
- Rules relating to the distribution of benefits
- Procedures for amendment and termination of the trust

The trust instrument must be lodged with the Master in accordance with section 4 of the Act before a trustee may assume control of trust property.

**If you are uncertain about the type of trust you are involved in, your rights as a beneficiary, or the extent of your duties as a trustee, we strongly recommend consulting with one of our attorneys for tailored legal guidance.**

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# DUTIES AND RESPONSIBILITIES OF TRUSTEES

Trustees occupy a position of trust and are held to strict legal and fiduciary standards. Their role is not simply administrative—they are legally obligated to act in the best interests of the beneficiaries and to manage trust property with care and integrity.

## Fiduciary Duties

In terms of section 9 of the Trust Property Control Act 57 of 1988, a trustee must:

- Exercise the care, diligence and skill that can reasonably be expected of a person managing the affairs of another;
- Avoid conflicts of interest;
- Act impartially between beneficiaries;
- Ensure that the trust is administered in accordance with the trust deed and all applicable laws.

Any clause in a trust deed that seeks to exempt a trustee from liability for a breach of this standard of care is void under section 9(2) of the Act.



# DUTIES AND RESPONSIBILITY

## Acting Only Once Authorised

Section 6 of the Act provides that a trustee may only act in their official capacity once authorised to do so in writing by the Master of the High Court. Acting as a trustee without this authorisation is unlawful, even if appointed in the trust deed.

Trustees must also furnish security, unless exempted, to ensure that trust property is protected against potential mismanagement.

## Management of Trust Property

### Trustees are required to:

- Keep trust property separate from personal property (section 12);
- Register and identify trust property as such in all dealings (section 11);
- Open and maintain a separate trust account for all trust funds (section 10);
- Record transactions accurately, and be able to account to both the Master and beneficiaries.

# POWER AND OVERSIGHT OF THE MASTER

**The Master of the High Court** plays a central supervisory role in the administration of trusts in South Africa. The Trust Property Control Act 57 of 1988 grants the Master wide-ranging powers to ensure compliance, accountability, and proper governance by trustees.

## Jurisdiction of the Master

**Section 3** of the Act determines which Master has jurisdiction over a trust:

- If the trust is created by a will, jurisdiction lies with the Master where the will is registered.
- For all other trusts, it is the Master in whose jurisdiction the greater portion of the trust property is situated.
- The Master who first assumes jurisdiction will retain it, even if the location of the trust property changes.

A different Master may only take jurisdiction if formally authorised to do so with the written consent of the Master currently overseeing the trust.

# LODGEMENT OF THE TRUST INSTRUMENT

Section 4 requires trustees to lodge the trust deed with the Master before assuming control of trust property. The Master cannot authorise a trustee to act until this step has been completed and the prescribed fee has been paid.

Any **amendments** to the trust deed must also be lodged with the Master.

## Trustee Authorisation and Disqualification

Under section 6, the Master may only authorise a trustee to act once:

- The trustee has lodged the trust instrument;
- The trustee has furnished **security**, unless exempted;
- The trustee is not **disqualified** in terms of section 6(1A), which includes disqualification for insolvency, dishonesty, certain criminal convictions, or legal incapacity.

The Master maintains a **public register of disqualified trustees**, and courts may extend periods of disqualification where necessary to protect the public.



# SUPERVISION AND INVESTIGATION

The Master has the power to:

- Call on trustees to account for their administration of trust property (section 16);
- Request delivery of books, records, and documents;
- Appoint a fit and proper person to investigate the administration of the trust;
- Make an order on the **costs of such an investigation.**

Trustees must respond honestly and fully to any questions posed by the Master.



# Removal of Trustees by the Master

In terms of section 20(2), the Master may remove a trustee in any of the following circumstances:

- The trustee becomes disqualified under section 6(1A);
- The trustee fails to provide security as required;
- The trustee's estate is sequestrated or liquidated;
- The trustee is declared mentally unfit;
- The trustee fails to perform any statutory or fiduciary duty.

This removal is **administrative**, as opposed to a court application, and takes immediate effect upon notice.

**If you are uncertain about the Master's jurisdiction or powers in relation to a particular trust, or if you wish to challenge or enforce action by the Master, we strongly recommend consulting with one of our attorneys for tailored legal guidance.**

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# COMMON GROUNDS FOR TRUST LITIGATION

Trust disputes typically arise when there is a breakdown in communication or trust (in both the legal and interpersonal sense) between trustees and beneficiaries, or between co-trustees. The most common causes of trust litigation in South Africa relate to mismanagement, non-compliance, and abuse of authority.

Below are some of the key grounds upon which litigation is often pursued:

## BREACH OF FIDUCIARY DUTIES

Trustees are legally required to act with care, diligence, and impartiality, always in the best interests of the beneficiaries. Common breaches include:

- Using trust funds for personal benefit;
- Failing to consult or obtain necessary consents;
- Neglecting to carry out administrative duties or make required distributions.

Where a trustee fails to meet their obligations, affected parties may approach the court or Master for enforcement or removal.

# DEADLOCK BETWEEN TRUSTEES

Where multiple trustees are appointed, disagreements may result in deadlock, particularly where decision-making requires consensus. This can paralyse the administration of the trust and frustrate the objects of the founder.

The court may intervene by:

- Removing one or more trustees;
- Appointing an independent trustee;
- Varying the trust deed to resolve procedural bottlenecks.

## CONFLICT OF INTEREST

A trustee may not allow personal interests to override their fiduciary responsibilities. Trust litigation commonly arises where:

- A trustee transacts with the trust in a personal capacity;
- A trustee fails to disclose personal interest in a proposed transaction;
- A trustee favours one beneficiary over others for personal reasons.

Section 9 of the Act prohibits indemnities that would absolve a trustee from liability in these scenarios.

# FAILURE TO DISCLOSE OR MAINTAIN BENEFICIAL OWNERSHIP RECORDS

Since the 2022 amendments to the Act, trustees are required to:

- **Disclose beneficial ownership to the Master;**
- **Maintain and update a register of beneficial owners.**

Non-compliance may result in criminal sanction and could give rise to legal challenges to the validity of decisions taken by trustees in breach of this obligation.

## LACK OF COMPLIANCE WITH THE TRUST DEED

Every trustee is bound by the **terms of the trust instrument**. If a trustee acts outside the scope of their authority or disregards procedural requirements, they may be interdicted, held liable for damages, or removed from office.

Examples include:

- Distributions made without required consents;
- Acting before being authorised by the Master;
- Deviating from the stated objectives of the trust.

**If you are involved in a dispute concerning the conduct of trustees or the administration of trust property, we strongly recommend consulting with one of our attorneys for tailored legal guidance.**



# REMEDIES AND LEGAL RECOURSE

When trust administration goes awry or beneficiaries' rights are violated, South African law provides various remedies. These remedies may be pursued either through the **Master of the High Court** or by application to the **High Court**, depending on the nature and severity of the issue.

## REMOVAL OF A TRUSTEE

Trustees may be removed in one of two ways:

- **By the Master** (section 20(2) of the Act):

The Master may remove a trustee without going to court if the trustee:

- o Becomes disqualified under section 6(1A);
- o Fails to furnish security or comply with lawful requests;
- o Is sequestrated, liquidated, or placed under curatorship;
- o Is declared mentally unfit;
- o Fails to perform duties to the satisfaction of the Master.

- **By the High Court** (section 20(1) of the Act):

Any person with an interest in the trust property may apply to court to remove a trustee where removal is **in the interests of the trust and its beneficiaries**. The court has a wide discretion and may consider:

- Hostility between trustees and beneficiaries;
- Breach of fiduciary duty;
- Loss of trust and confidence;
- Operational dysfunction of the trust.

# COURT APPLICATIONS TO ENFORCE DUTIES

Section 19 empowers interested parties or the Master to apply to court to compel a trustee to:

- Perform duties imposed by the trust deed, statute, or the Master;
- Comply with financial or administrative obligations (e.g. submission of accounts, disclosures, recordkeeping);
- Rectify irregularities in administration.

Failure to comply may lead to a **court order, contempt proceedings, or personal liability** for losses incurred by the trust.

## VARIATION OR DELETION OF TRUST PROVISIONS

Section 13 allows the court to **vary or delete** provisions of the trust instrument if those provisions:

- Prejudice the interests of beneficiaries;
- Hamper the achievement of the founder's objectives; or
- Are contrary to public policy.

This remedy is useful where rigid or outdated clauses are impeding the proper operation of the trust.

# INTERIM RELIEF

Where urgent intervention is required (e.g. to freeze trust accounts, prevent dissipation of assets, or preserve the status quo), parties may apply to court for:

- **Interim interdicts;**
- **Rule nisi orders;**
- **Directions on urgent trust management issues.**

Such relief is often used to secure evidence or prevent harm while longer litigation is pending.

**If you believe your rights as a trustee or beneficiary have been violated, or if urgent action is needed to protect trust assets, we strongly recommend consulting with one of our attorneys for tailored legal guidance.**

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# FREQUENTLY ASKED QUESTIONS

The following questions reflect common concerns raised by trustees, beneficiaries, and other interested parties in the context of trust administration and litigation in South Africa.

## **1. When can a trustee be removed in South Africa?**

A trustee may be removed by the Master of the High Court (administratively) or by the High Court (on application) if their removal is in the interests of the trust and its beneficiaries. Grounds include misconduct, disqualification, failure to perform duties, or deadlock.

## **2. What are a trustee's fiduciary duties?**

Trustees must act with care, diligence, and skill, manage the trust honestly and impartially, and always act in the best interests of the beneficiaries. They must also comply with the terms of the trust deed and the Trust Property Control Act.

## **3. Can beneficiaries demand financial statements or information?**

Yes. Beneficiaries have the right to request reasonable information about the administration of the trust, especially regarding distributions, asset management, and decision-making. Refusal to account may lead to litigation.

## **4. What happens if trustees cannot agree?**

Where trustees are deadlocked, the trust may become incapable of functioning, placing the assets and beneficiaries at risk. The court may intervene to resolve the deadlock, appoint an independent trustee, or vary the trust deed.

# FREQUENTLY ASKED QUESTIONS

## 5. Can the Master's decisions be challenged?

Yes. Section 23 of the Act allows any person aggrieved by a decision of the Master—such as a refusal to authorise a trustee or a removal—to approach the High Court for relief.

## 6. Can a trust be amended or terminated?

Most inter vivos trusts can be amended or terminated only with the consent of all the trustees and beneficiaries (if they have vested rights). In certain cases, the court may vary or delete trust provisions under section 13 of the Act.

## 7. What are the consequences of failing to disclose beneficial ownership?

Failure to comply with the disclosure obligations under section 11A may result in a fine of up to R10 million, imprisonment of up to five years, or both. This includes failure to maintain and submit a register of beneficial owners to the Master.

# FREQUENTLY ASKED QUESTIONS

## **8. Can a beneficiary sue a trustee personally?**

Yes. If a trustee breaches their fiduciary duties and causes loss to the trust or its beneficiaries, they may be held personally liable and ordered to compensate the trust.

## **9. Can a trust be sued or sue in its own name?**

No. A trust is not a legal person. Any litigation must be brought by or against the trustees in their representative capacity. All trustees must generally be joined in legal proceedings.

## **10. Can a foreign trustee administer a South African trust?**

A foreign trustee may only act in respect of South African trust property if they have been formally authorised by the Master of the High Court under section 8 of the Act.

If your question has not been answered here or you need legal advice on a specific issue, we strongly recommend consulting with one of our attorneys for tailored legal guidance.

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# HOW VERMEULEN ATTORNEYS CAN ASSIST

At Vermeulen Attorneys, we understand the sensitive nature of trust disputes and the importance of protecting both the assets and the relationships at stake. Our team provides strategic, legally sound solutions for trustees, beneficiaries, and interested parties involved in contentious trust matters.

## Our Trust Litigation Services Include:

- **Removal of trustees** through court applications or liaison with the Master
- **Applications to compel** trustees to account or comply with the trust deed
- **Trustee defence** in response to allegations of misconduct or breach of duty
- **Urgent relief**, including interim interdicts to preserve trust assets
- **Variation of trust provisions** through section 13 applications
- **Advice on compliance** with disclosure obligations under the Trust Property Control Act
- **Independent trustee appointments** in complex or high-conflict trusts
- **Mediation and dispute resolution** to avoid costly litigation where possible



# HOW VERMEULEN ATTORNEYS CAN ASSIST?

## Why Choose Vermeulen Attorneys?

- Deep understanding of South African trust law and litigation procedure
- Proven track record in resolving high-conflict family trust disputes
- Offices in Roodepoort and Ballito, with consultations available nationwide via MS Teams
- Focused on practical, enforceable outcomes that safeguard trust assets and beneficiaries' rights

## Take the Next Step

If you are involved in a trust dispute or require advice regarding your duties or rights under a trust, we encourage you to get in touch with our team. To arrange a consultation, visit **[www.vermeulenlaw.co.za](http://www.vermeulenlaw.co.za)**, email **[info@vermeulenlaw.co.za](mailto:info@vermeulenlaw.co.za)**, or call us at **010 109 1089**.

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