

Trusts Act 2019 Explained: The Rules Every Trustee Should Know

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The Act is significant as it clarifies current trust laws which can be difficult to understand for the hundreds of thousands of Mum and Dad trustees, not to mention the lesser number of, but equally important, family friends who have been doing a “favour” by acting as an independent trustee.

Described as “consumer” legislation, the Act aims to increase trustee accountability and transparency to trust beneficiaries. In particular, trustees will need to be more active than they may have ever been and will need to satisfy many duties that include:

- Knowing the terms of the trust deed;
- Acting in the best interests of the beneficiaries;
- Exercising powers for a proper purpose; and, possibly the most controversial duty,
- Disclosing trust information to all beneficiaries of the trust, including the trust deed and financial statements and accounts.

The purpose of this article is to bring to the attention of all settlors, trustees, and appointors of trusts the fact that they need to take action and be sure that they are not in breach of their duties and obligations under the Trusts Act. Trustees who are in breach of their trustee duties may be personally liable for any loss suffered by the beneficiaries of the Trust. Attached to this article is our “Acting As Trustees” pamphlet which summarises trustee duties and obligations set out in the Act – click here to view.

Since coming into force the Trusts Act has caused many settlors and trustees (of the 400,000 or so trusts in New Zealand) to clarify and/or modify the terms of the trust deed that they administer, or wind them up entirely, as they are no longer fit for the original purpose for which they were settled.

Before taking any decisions on the future of the Trust, care must be exercised by the trustees and legal and accounting advice should be sought to avoid unexpected and undesirable consequences for trustees and beneficiaries alike.

If you are a settlor, trustee or appointor of a Trust and you:

- Have not held an Annual General Meeting since the Trusts Act 2019 came into effect;
- Have any concerns about how the Trusts Act will impact you; or
- Need help understanding your obligations under the Trusts Act; then

Please contact one of our trust specialists to discuss your queries or concerns.