

WHERE EXPERTISE AND EMPATHY GO HAND IN HAND



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Law

01	Acting As Trustee
02	Trust Documents
03	Beneficiary Information
04	Trustee Liability

Table of CONTENTS



Acting AS Trustee

Your guide to the Trust Act
2019 (the Act).

The Act sets out how trustees are to perform their role as trustees. They have two types of duties:

- Mandatory duties – These **must** be adhered to; and
- Default duties – Which can be modified in the Trust Deed.

The person setting up a trust (called the settlor) needs to understand any modification to the default duties.	Mandatory Duties	Know the terms of the Trust Deed	Act in Accordance with the terms of the Trust Deed	Act honestly and in good faith	Act for the benefit of beneficiaries or to further permitted purposes of the trust	Exercise powers for a proper purpose
	Default Duties	General duty of care	To invest prudently	Not exercise power for own benefit	Consider exercise of power	Not to bind or commit trustees to future exercise of discretion
		Avoid conflicts of interest between trustee interest and beneficiaries	Impartiality	Not to profit	To act for no reward	Act unanimously

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Trust Documents

✓ All Trustees must keep copies of certain Trust documents.

👤 All Trustees must be satisfied that **at least one trustee holds all other core documents** on their behalf.



The Trust Deed or document that contains the terms of the Trust



Any variations made to the Trust Deed or Trust



Records of the Trust property that identify the assets, liabilities, income and expenses of the Trust

(that are appropriate to the value and complexity of the Trust property)



Records of trustee decisions



Written contracts



Accounting records or financial statements



Documents of appointment, removal and discharge of trustees



Letters or memorandum of wishes from the settlor



Documents which a former trustee has passed onto a current trustee



Any other document necessary for the trust administration

Beneficiary Information

There is a presumption that trustees provide beneficiaries with basic trust information.

If trustees believe that the information should be given then the following can be provided.

Advise the person they are a beneficiary of the Trust

The name and contact details of the trustees and any changes of trustees

The beneficiary's right to request a copy of the terms of the trust or other trust information

In some circumstances more trust information can be requested.

All information on the terms of the trust, its trust property and its administration

Sets of accounts, trust minutes and information on distributions

Trustee Liability

Know the risks and how to protect yourself

When can you be personally liable?

When the trust incurs expenses such as:

- Debts owing to third parties – insurance, rates
- IRD tax debts

Make sure the trust deed allows you to be reimbursed

From your actions (or lack of) as a trustee

- Breaching your duties
- Making decisions without thinking through the consequences
- Not meeting legal standards such as Health and Safety and Resource Management laws

What can you do to help yourself?

Understand your role and duties as a trustee

Get assurance from the settlor (or beneficiaries) that they will have your back and cover costs and liabilities you incur as a trustee

Check all contracts to see if you can limit liability to the assets of the trust especially if you are an independent trustee

Get advice

Want out?

You can retire or be removed but beware, obligations may continue unless you are properly discharged by the other trustees.

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Meet
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