



Trusts Act 2019

Summary of the Key Changes to Trust Law in New Zealand

1. Introduction

1.1 The Trusts Act 2019 was passed into law on 30 July 2019 and comes into effect on 30 January 2021. The purpose of the new Act is to restate and reform trust law in New Zealand by:

- (a) Setting out the core principles of the law relating to express trusts; and
- (b) Providing for default administrative rules for express trusts; and
- (c) Providing for mechanisms to resolve trust-related disputes; and
- (d) Making the law of trusts more accessible.

1.2 The Act includes a description of the key features of a Trust to help people understand their rights and obligations, that includes:

- Defining a trust as:

“A structure where a trustee holds and deals with trust property for the benefit of people who are described as beneficiaries for a permitted purpose and the trustees are required to act in the best interests of the beneficiaries.”

- Stating that a sole trustee cannot be a sole beneficiary of a trust.
- Increasing the maximum life of a trust from 80 years to 125 years.
- Setting the minimum age you have to be in order to hold a formal trust role as 18 years old.

2. Mandatory & Default Duties

2.1 Mandatory Duties: The Act contains mandatory and default trustee duties which are designed to help trustees understand their obligations. Mandatory trustee duties cannot be modified or excluded by the terms of the Trust Deed and include the following:

- The duty to know the terms of the trust.
- The duty to act in accordance with the terms of a trust.
- The duty to act honestly and in good faith.

- The duty to act for the benefit of beneficiaries or to further the permitted purpose of a trust.
- The duty to exercise powers for a proper purpose.

2.2 **Default Duties:** There are default trustee duties which can be modified or excluded by the terms of a trust and these duties include:

- The general duty of care.
- The duty to invest prudently.
- The duty not to exercise a power for a trustee's own benefit.
- The duty to consider the exercise of a power.
- The duty not to bind or commit trustees to future exercise of discretion.
- The duty to avoid a conflict of interest.
- The duty of impartiality.
- The duty not to profit.
- The duty of a trustee to act for no reward.
- The duty to act unanimously.

3. Importance of Trust Information

3.1 The Act contains requirements for managing trust information and disclosing it to beneficiaries. The Act sets out what information trustees **must keep** and how long documents must be kept. Each trustee must keep the core trust documents which are:

- Copies of the trust deed and any variations to it.
- Records of the trust property that identify the assets, liabilities, income and expenses of the trust.
- Records of decisions made.
- Any written contracts entered into.
- Any accounting records and financial statements prepared.
- Documents of appointment, removal and discharge of trustees.
- Any letter or memorandum of wishes from the Settlor of the Trust.

3.2 The trust documents need to be kept for the duration of the trusteeship and must be passed on when a trusteeship changes.

3.3 Trustees will have to either keep their own copies of 'core trust documents' or ensure that at least one of the other trustees holds all of the core trust documents and will make them available on request. If a trustee is not confident in their fellow trustees' ability with paperwork, they will need to keep these documents personally.

4. Disclosure of Trust Information to Beneficiaries

4.1 The Act favours keeping beneficiaries informed and clearly outlines that basic trust information is to be provided to every qualifying beneficiary. That basic information is:

- The fact that a person is a beneficiary of a trust.
- The name and contact details of the trustee.
- Details of changes in trustees.
- The right of the beneficiary to request a copy of the terms of the trust or trust information.

4.2 In addition to the basic information, there is a presumption that a trustee must, within a reasonable period of time, give a beneficiary or their representative the trust information that person has requested, unless there is a good reason to decline such a request. The Act outlines a number of factors trustees have to take into account in deciding whether it is reasonable to decline an information request.

4.3 Trustees may only refuse to provide information to beneficiaries after considering a series of factors set out in the legislation and the trustees must consider these factors when deciding whether these apply in the circumstances, including:

- The nature and interests of the beneficiary (including whether the beneficiary is likely to receive trust property in the future).
- The nature and interests of other beneficiaries.
- The intentions of the settlor when the trust was established.
- The age and circumstances of the beneficiary in question and the other beneficiaries of the trust.
- The effect of giving the beneficiary the information.
- The nature and context of any request for further information.
- Any other factor a trustee reasonably considers is relevant.

4.4 Trustees will have to carefully consider any decision not to disclose information.

5. Other Key Changes

5.1 There are practical and flexible trustee powers, allowing trustees to manage and invest trust property in the most appropriate way. There are provisions to support cost-effective establishment and administration of trusts (such as clear rules on the variation and termination of trusts).

5.2 There will now be options for removing and appointing trustees without having to go to Court to do. There are also modern dispute resolution procedures. In the interest of keeping trust related disputes out of Court where possible, the Act provides for alternatives such mediation or arbitration.

