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OWNING A FAMILY TRUST

A Practical Guide to Understanding
Trusts, Trustees, Compliance,
Taxation and Estate Planning
in South Africa



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Owning a Family Trust

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Introduction

A family trust is one of the most effective legal structures available for protecting wealth, preserving assets, and ensuring that your estate is administered according to your wishes. Despite their widespread use, trusts remain one of the most misunderstood legal entities in South Africa. Many people establish trusts believing they automatically reduce tax or protect all assets from creditors, while others avoid trusts altogether because they believe they are only suitable for the very wealthy.

The reality lies somewhere in between.

A properly established and professionally administered trust can provide significant estate planning, succession planning and asset protection benefits. However, trustees also have substantial legal, administrative and tax responsibilities that must be fulfilled on an ongoing basis.

Unlike a private company, a trust has no shareholders or owners. Instead, trustees are appointed to manage assets for the benefit of one or more beneficiaries in accordance with the provisions of a Trust Deed and South African legislation.

Failure to administer a trust correctly may result in adverse tax consequences, disputes between beneficiaries, personal liability for trustees, or even the trust being regarded as the "alter ego" of its founder, potentially undermining many of the intended benefits.

This guide provides a practical overview of the purpose of a family trust, how a trust is established, the duties of trustees, ongoing compliance requirements, taxation principles, and the circumstances under which a trust may be an appropriate estate planning tool.



What is a Trust?

A trust is a legal arrangement in which one or more persons, known as **trustees**, hold and administer assets for the benefit of one or more **beneficiaries** according to the terms of a **Trust Deed**.

The assets transferred into the trust no longer belong to the individual who created the trust (known as the founder or donor). Instead, they are owned and administered by the trust itself, with trustees acting in a fiduciary capacity.

Unlike a company:

- A trust has no shareholders.
- A trust has no owners.
- Trustees administer and control the trust assets.
- Beneficiaries receive the benefits provided for in the Trust Deed.
- The trust continues to exist independently of the founder, provided it is administered correctly.

A trust is therefore primarily a legal relationship rather than a business entity.

Why Do People Establish a Family Trust?

A trust should never be established simply because someone has heard that it "saves tax." While there may be legitimate tax planning opportunities in certain circumstances, the primary purpose of a trust is to provide long-term protection and administration of assets.

Some of the most common reasons for establishing a family trust include:

Estate Planning

Assets held in a properly administered trust generally do not form part of the founder's deceased estate, which may simplify estate administration and provide continuity after death.

Protecting Family Wealth

A trust enables assets to be preserved for future generations while ensuring they are administered according to predetermined rules.

Protecting Minor Children

Minor children cannot directly manage substantial inheritances. A trust allows trustees to administer assets on behalf of children until they reach an appropriate age.

Succession Planning

Family businesses, investment portfolios and properties may continue to be managed by trustees after the death of the founder without the immediate disruption associated with winding up an estate.

Asset Protection

Under certain circumstances, trusts may assist in protecting family assets from unnecessary fragmentation or mismanagement. However, trusts should never be established with the intention of defrauding creditors or avoiding legal obligations.

Investment Administration

Many families use trusts to hold long-term investment portfolios, rental properties or business interests for multiple generations.

Providing for Vulnerable Beneficiaries

A trust can provide ongoing financial support for beneficiaries who are minors, have disabilities, or are otherwise unable to manage their own financial affairs.

Types of Trusts

Although there are many specialised forms of trusts, the majority of private individuals will encounter one of the following:

Living Trust (Inter Vivos Trust)

A living trust is established during the founder's lifetime.

The founder transfers assets into the trust, after which the trustees administer those assets according to the Trust Deed.

This type of trust is commonly used for:

- Estate planning
- Family investment portfolios
- Property ownership
- Business succession planning
- Protecting family wealth



Testamentary Trust

A testamentary trust only comes into existence after the death of an individual through the provisions contained in their Will.

This type of trust is often used where:

- Minor children inherit assets.
- Beneficiaries require long-term financial support.
- Assets need to be professionally administered after death.

How is a Trust Established?

The process of establishing a trust is relatively straightforward, provided the necessary legal documentation is prepared correctly.

Step 1 – Drafting the Trust Deed

The Trust Deed is the founding document of the trust.

It sets out:

- The objectives of the trust
- The powers of the trustees
- The rights of beneficiaries
- Administrative procedures
- Distribution rules
- Appointment and removal of trustees

The Trust Deed should always be professionally drafted to ensure that it complies with current legislation and reflects the family's objectives.

Step 2 – Appointment of Trustees

The founder appoints one or more trustees who will administer the trust.

Trustees have significant legal responsibilities and must always act:

- Honestly
- Independently
- In good faith
- In the best interests of the beneficiaries

Many family trusts appoint a combination of family members together with an ***independent trustee*** to assist with objective decision-making and sound governance.

Step 3 – Registration with the Master of the High Court

Once the Trust Deed has been completed, the trust is registered with the Master of the High Court.

Supporting documentation generally includes:

- Trust Deed
- Trustee acceptance forms
- Certified identity documents
- Proof of address
- Other prescribed documentation

After reviewing the application, the Master issues ***Letters of Authority***, authorising the trustees to administer the trust.

Step 4 – Registering with SARS

Every trust must register with the South African Revenue Service (SARS) for Income Tax purposes.

Depending on the activities of the trust, additional registrations may also be required, including:

- VAT registration
- PAYE registration
- UIF registration

These registrations are only necessary where the trust meets the relevant legislative requirements.

Step 5 – Opening a Trust Bank Account

Once the trust has been registered and the Letters of Authority have been issued, a bank account may be opened in the name of the trust.

It is essential that all trust income and expenses flow through the trust's bank account.

Trustees should never mix trust funds with their personal finances, as this may ***undermine the integrity of the trust.***

Step 6 – Transferring Assets into the Trust

The trust only becomes effective once assets are transferred into it.

Assets commonly transferred include:

- Investment portfolios
- Rental properties
- Cash investments
- Shares in private companies
- Loan accounts
- Other approved investments



Each transfer must be properly documented and may have tax implications. Professional advice should therefore be obtained before assets are transferred into a trust.

Main Responsibilities of Trustees

Being appointed as a trustee is a position of significant responsibility. Trustees do not own the assets of the trust; instead, they are responsible for managing those assets on behalf of the beneficiaries.

Trustees must always exercise independent judgement and comply with both the Trust Deed and applicable legislation.

Their primary responsibilities include:

- Acting honestly and in good faith.
- Acting in the best interests of all beneficiaries.
- Administering the trust according to the Trust Deed.
- Exercising reasonable care, skill and diligence.
- Acting jointly with the other trustees.
- Avoiding conflicts of interest.
- Maintaining proper accounting records.
- Protecting trust assets.

- Ensuring that all statutory obligations are fulfilled.

Trustees who fail to carry out these duties may, in certain circumstances, be held personally liable for losses suffered by the trust or its beneficiaries.



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