

TRUSTS ACT 2019

Are you ready for the changes to the Trust Legislation.

The changes take effect from 30 January 2021.

Read our Fact Sheet and let us know if you have any queries.



CHANGES TO TRUST LEGISLATION

Changes to Trust Legislation have been made, with the provisions for the new **Trusts Act 2019** coming into effect on 30 January 2021.

Now is the time to check that you are prepared for these changes and know what to expect.

The **Trusts Act 2019** is the first major rewrite of trustee legislation since the Trustee Act 1956. The new Act is intended to update existing Trust Law, ensuring that beneficiaries have enough information so that the terms of the Trust are being carried out properly.

What are the changes?

Trustee Duties

Trustee duties have now been formalised in legislation. The requirements placed on Trustees are higher with no excuse for not knowing what is required.

The new Act separates Trustee duties into two areas as follows:

Mandatory Trustee Duties

Mandatory duties cannot be modified or excluded by the Trust Deed so all Trustees will be required to abide by these duties as follows:

- Duty to know the terms of the Trust;
- Duty to act in accordance with the terms of the Trust;
- Duty to act honestly and in good faith;
- Duty to deal with the Trust property and to act for the benefit of Beneficiaries in accordance with the terms of the Trust Deed;
- Duty to exercise powers for a proper purpose.

Default Trustee Duties

Default duties are obligations by which Trustees must abide – unless the settlor decides otherwise when the Trust is established.

- General duty of care;
- Duty to invest prudently;
- Duty not to exercise power for own benefit;
- Duty to consider exercise of power;
- Duty not to bind or commit Trustees to future exercise of discretion
- Duty to avoid conflict of interest;
- Duty to act impartially;
- Duty not to profit;
- Duty to act for no reward;
- Duty to act unanimously



Note: Mandatory Duties cannot be excluded whereas Default Duties can be modified or excluded by the terms of the Trust. The list of Trustee Duties is not full and final but is intended to outline the basics so that both Beneficiaries and Trustees are aware of what is expected.

BENEFICIARIES' RIGHTS TO INFORMATION

As a minimum, Trustees are now required to provide Beneficiaries with basic Trust information, as early as possible, after the Trust has been set up (or for existing Trusts prior to 30 January 2021).

Basic Trust information should ideally be supplied to Beneficiaries without them asking for it.

BASIC TRUST INFORMATION

The following sets out the basic Trust Information that should be supplied to Beneficiaries:

- Notification that the person is a Beneficiary of the Trust;
- The name and contact details of all the Trustees;
- The occurrence of, and details of, each appointment, removal and retirement of a Trustee as it occurs; and
- The right of the Beneficiary to request a copy of the terms of the Trust and Trust Information.

Trust Information is defined in the Act as meaning any information:

- Regarding the terms of the Trust, the administration of the Trust, or the Trust property; and
- That it is reasonably necessary for the Beneficiary to have to enable the Trust to be enforced; but
- Does not include reasons for Trustees' decisions.

CONTACT US

Nattrass Gibb & Associates

16 Clevedon Road, Papakura
PO Box 72198, Papakura
Telephone: 09 298 7639

Email: admin@ngatax.co.nz

Website: www.ngatax.co.nz

OTHER AREAS IMPACTED BY THE TRUST ACT 2019

As the law currently stands, the age of majority is 20. This is the default age that a person can inherit if specific age is not stated. Under the new Act the age of majority will be 18.

The new Act will also extend the maximum period of a Trust from 80 years to 125 years. This will be the default maximum lifetime of a Trust unless a specific period is stated in the Trust Deed.