

# ZA Know Your Rights: Trust Law in South Africa

Prepared by **RW KRUGER AND ASSOCIATES INC**

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(Public Legal Education Guide)

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## 1. Understanding Trust Law

A **trust** is a legal arrangement where trustees manage property or assets on behalf of beneficiaries according to the terms of a **trust deed**.

Trusts are valuable for **estate planning, wealth protection, and supporting dependants or charitable causes**, but they must comply strictly with law.

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## 2. Key Types of Trusts in South Africa

### A. Inter Vivos (Living) Trust

- Created by a **trust deed** during the founder's lifetime.
- Registered with the **Master of the High Court**.
- Used for family wealth, business continuity, or asset protection.

### B. Testamentary Trust

- Created through a **will**, effective after death.
  - Common for caring for **minor children or dependants**.
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## 3. The Key Parties in a Trust

Role	Function	Legal Rights & Duties
<b>Founder</b>	Establishes the trust and defines its purpose.	Transfers property into the trust and may not control it thereafter.
<b>Trustees</b>	Administer and safeguard trust assets.	Must act in <b>good faith, avoid conflicts</b> , and report to the <b>Master of the High Court</b> .
<b>Beneficiaries</b>	Persons entitled to benefit under the trust.	Have the right to information, fair treatment, and proper administration.

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## 4. Registration and Oversight

All trusts (except certain testamentary trusts) must be **registered with the Master of the High Court** in the jurisdiction where most trust assets are held.

Trustees may **not act** until the Master issues **Letters of Authority (Form J406)**.

Trustees must:

- Maintain a **separate bank account**.
- Keep detailed **financial records**.
- Submit **Master's forms and declarations** as required by law.

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## 5. Master's Office Forms: What They Are and Why They Matter

The **Master of the High Court** administers trusts through a series of **official forms (Forms J401–J417)**.

Below are the most important ones used during registration and administration:

Form	Name / Purpose	Who Completes It
J401	<b>Application for Registration of Trust</b>	Founder or attorney applies to the Master to register the trust. Must be accompanied by the trust deed and supporting documents.
J405	<b>Acceptance of Trusteeship and Undertaking</b>	Each trustee signs this to accept appointment and agree to act according to the law and trust deed.
J406	<b>Letters of Authority</b>	Issued by the Master once all requirements are met. It legally empowers trustees to act.
J407	<b>Bond of Security</b> (if required)	Used when trustees must furnish security for trust property, unless exempted (e.g., where a financial institution is trustee).
J409	<b>Undertaking by Auditor/Accountant</b>	Filed where an auditor or accountant manages the trust's financial reporting.
J417	<b>Amendment / Substitution of Trustee</b>	Used when a trustee resigns, dies, or a new trustee is appointed. Must be approved by the Master.

Form	Name / Purpose	Who Completes It
J410	<b>Trustee's Account Submission</b>	Periodic submission of trust financial statements and reports for review.
J401(A)	<b>Schedule of Trust Property</b>	A list of all assets initially placed in the trust. Required during registration.

### Practical Tip

Always retain **certified copies** of all submitted Master's forms and correspondence. The Master's file forms part of the **public trust record**, accessible to interested parties with valid reason.

## 6. Beneficiaries' Rights

Beneficiaries have the right to:

1. **Access trust documents and accounts** upon reasonable request.
2. **Receive benefits** as provided in the trust deed.
3. **Fair and impartial treatment** by trustees.
4. **Accountability** — Trustees must explain decisions and provide annual reports.
5. **Recourse** — You may approach the **Master** or a **court** for relief if trustees breach their duties.

## 7. Trustees' Duties & Liabilities

Trustees must:

- Act **jointly**, unless authorised otherwise.
- Maintain **proper accounts** and **annual records**.
- Keep **trust and personal property separate**.
- Avoid **conflicts of interest** or self-dealing.
- Report changes (e.g., address, trusteeship, or auditor) to the Master within 14 days.

Failure to comply may result in:

- Removal as trustee.

- **Personal liability** for losses.
  - Possible **criminal prosecution** for misuse of trust property.
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## 8. Common Issues and How to Respond

Issue	What You Can Do
Trustees refuse to disclose information	Write formally requesting access; if ignored, approach the <b>Master</b> .
Dispute among trustees or beneficiaries	Mediation or application to the <b>High Court</b> may be required.
Unauthorised transactions	Trustees can be held personally liable and may be removed.
Missing funds or fraud	Report to the <b>Master, SAPS</b> , or seek legal assistance immediately.

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## 9. Tax and Compliance Overview

- Trusts are **taxable entities** under the **Income Tax Act**.
  - Trustees must register the trust with **SARS** and file annual returns.
  - **Capital Gains Tax (CGT)** applies on asset disposals.
  - Financial records must comply with **FICA** and **POPIA** standards.
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## 10. The Master's Role in Protecting Your Rights

The **Master of the High Court** ensures proper administration by:

- Keeping trust registration records and forms.
  - Issuing Letters of Authority.
  - Investigating misconduct and complaints.
  - Removing unfit trustees.
  - Enforcing compliance with the **Trust Property Control Act 57 of 1988**.
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## 11. How Rob Green & Associates Can Help

At **Rob Green & Associates**, we provide:

- **Trust creation and registration** (with all Master's forms prepared and filed).
- **Ongoing trustee support**, record-keeping, and compliance audits.
- **Amendments, resignations, and replacements** of trustees.
- **Dispute resolution** for beneficiaries and trustees.
- **Guidance on tax and estate implications** of trusts.

Our firm ensures that every trust we assist with is **legally compliant, professionally managed, and ethically administered**.

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### **Contact**

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