



Trustee disclosure obligations under the Trusts Act 2019

What you need to know

- The Trusts Act codifies the obligations of trustees and the rights of beneficiaries with the aim of making trustees more accountable and trust law more understandable.
- The Act prescribes trustee obligations to keep and disclose information, which we detail in the article below.

[Click here](#) for our article summarising the key features of the Trusts Act.

Trustees' obligations to give information to beneficiaries

The Act confers on beneficiaries rights to receive and request trust information from trustees. It is an essential part of the 'trust information' rationale that the trustees are obliged to keep certain information so the trust can be enforced and trustees made accountable.

Record retention - what to keep

The Act sets out what information a trustee must keep. This includes:

- (a) The trust deed and any other document that contains or varies terms of the trust
- (b) Records that identify the assets, liabilities, income, and expenses of the trust
- (c) Records of trustee decisions
- (d) Written contracts
- (e) Accounting records and financial statements

- (f) Documents of appointment, removal, and discharge of trustees
- (g) Any letter or memorandum of wishes from the settlor
- (h) Any other documents necessary for the administration of the trust.

An outgoing trustee has an obligation to hand over the trust documents to a continuing or replacement trustee.

Where there are multiple trustees, there is an obligation on **every** trustee to keep the trust deed and variations but all the other trust documents may be kept by only one of the trustees.

The documents must be kept for the duration of the trusteeship.

How to keep it

Original documents should be kept but it is permissible for trust records to be kept electronically.

Basic trust information and other trust information

"Trust information" is defined as any information:

- Regarding the terms of the trust, the administration of the trust, or the trust property
- That it is reasonably necessary for the beneficiary to have to enable the trust to be enforced **but** does not include reasons for the trustees' decisions.

The Act distinguishes between "basic trust information" and "other" requested trust information.

“**Basic trust information**” is:

- (a) The fact that the person is a beneficiary of the trust
- (b) The name and contact details of the trustee(s)
- (c) The occurrence of, and details of, each appointment, removal, and retirement of a trustee as it occurs
- (d) The right of the beneficiary to request a copy of the terms of the trust or other trust information.

Presumptions about trust information

Basic trust information: There is a **rebuttable presumption** that trustees must make the basic trust information available to each and every beneficiary, whether or not it has been requested. The trustees are required to consider at reasonable intervals if basic trust information should be made available to beneficiaries.

Other trust information: There is also a **rebuttable presumption** that trustees must within a reasonable period of time give a beneficiary any other trust information that the beneficiary has actually requested.

To inform or not to inform

When considering whether to provide a beneficiary with the basic trust information and when faced with a request for other trust information the trustees must, before giving the information, consider a number of factors set out in the Act. In outline, the factors include:

- (a) Nature of the interests in the trust held by the beneficiary and the other beneficiaries of the trust
- (b) Any personal or commercial confidentiality
- (c) The expectations and intentions of the settlor at the time of the creation of the trust
- (d) The age and circumstances of the beneficiary
- (e) The effect of giving the information
- (f) The practicality of giving information to all beneficiaries or all members of a class of beneficiaries
- (g) The practicality of imposing restrictions and other safeguards on the use of the information (for example, by way of an undertaking, or restricting who may inspect the documents).

A trustee, having considered all the factors, must decide if the information should or should not be provided to the beneficiary.

Court

If no beneficiary of the trust has any trust information because the trustee cannot identify any beneficiary to give information to, decides to withhold all of the basic information, or refuses a request for trust information, then a trustee may be obliged to apply to the High Court for directions.

A beneficiary may also apply to the High Court for information if basic trust information has not been made available or if a request for other trust information has been refused.

Get in touch

Please get in touch with our experts if you require further information or wish to discuss any aspect of the Trusts Act.

For a summary of the key features of the Trusts Act [click here](#).

Contacts



Richard Broad, Senior Associate

P: +64 9 977 5024 M: 021 469 046

E: richard.broad@simpsongrierson.com



Barney Cumberland, Partner

P: +64 9 977 5155 M: 021 497 462

E: barney.cumberland@simpsongrierson.com



Hugh Lindo, Partner

P: +64 3 968 4010 M: 027 711 7171

E: hugh.lindo@simpsongrierson.com



Paul Windeatt, Senior Associate

P: +64 9 977 5024 M: 021 240 9240

E: paul.windeatt@simpsongrierson.com



Joanna Lim, Senior Associate

P: +64 3 968 4017 M: 027 359 407

E: joanna.lim@simpsongrierson.com



Nicholas Bland, Senior Associate

P: +64 9 977 5313 M: 021 241 4504

E: nicholas.bland@simpsongrierson.com

Disclaimer: This information is of a general nature only and is not provided with regard to the specific objectives, financial situation and particular needs of any person. Before making any decisions you should seek financial, legal, tax or other specialist advice as may be required.