

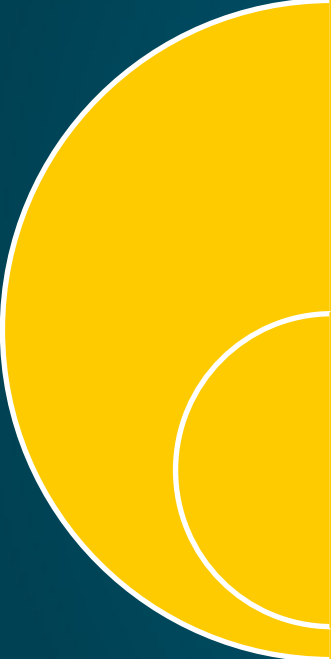


Die leier in skoolbeheer en -bestuur
The leader in school governance and management





What is a Trust?



The Trust Property Control Act, No. 57 of 1988, provides a definition for a trust. Briefly, a trust is an arrangement through which property ownership is bequeathed or made over from one person to another in terms of a trust document/instrument in order to administer such property according to the conditions of the trust document for the benefit of the trust beneficiary/beneficiaries.

Even though most jurists agree that a trust is not a juristic person, and therefore does not have its own legal identity apart from the trustees, it remains clear that a trust has a separate type of existence and therefore is a **unique legal entity**.



A typical trust displays the following characteristics:

- a donor/endower (also known as the founder);
 - the transfer of property (money or other goods);
 - the appointment of trustees;
 - the appointment of beneficiaries – these could be individuals (e.g. the donor's own children) or a class of persons (e.g. learners at a particular school) or merely the achievement of an objective (e.g. nature conservation); and
 - conditions imposed by the donor/endower in terms of which the trustees should administer the property.
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- South African law also distinguishes between two main trust groups, namely:
 - a *trust mortis causa* – a trust created in a testator's will. After the testator's death, his/her assets descend in full or partially upon the trustees, who have to administer them for the benefit of the beneficiaries appointed in the testament;
 - an *inter vivos trust* – a trust created during the lifetime of the trust founder.





Trustees

- The Trust Property Control Act require a trustee to perform his duties and exercise his powers with the **care, diligence and skill**, which can reasonably be expected of a person who manages the affairs of another.
- Trustees' capacity imposes only one responsibility on them:
to control and administer the trust according to the conditions of the trust deed for the benefit of the beneficiaries or the achievement of the trust objective.



SA Schools Act on Trusts:

- **Section 37(4)**
 - This section provides that money and other goods donated or bequeathed in trust to a school must be utilised in accordance with the conditions of that trust. [Implications?](#)
- **Section 37(7)(a) and (b)**
 - Sub-section (a) provides that school money may not be paid into a trust or utilised to found a trust.
 - Sub-section (b) provides that should school money have been paid into a trust or utilised to found a trust prior to 1 January 2002, such trust is regarded as invalid. In such a case, the money should be paid back to the school. [Implications?](#)
- **Section 37(7)(c)**
 - The sub-section provides that a public school SGB may not collect money or contributions from parents for the purposes of evading or manipulating the payment of compulsory school fees, and then use the money to found or fund a trust. [Implications?](#)



Relationship between Trust and school

- There is no prohibition on the founding or existence of trusts that support schools or school learners.
- The mere existence of trusts is not the problem, but rather the nature of the transactions between the school and the trust.
 - Trustees must manage the trust in accordance with the trust conditions, and in the interest of the trust beneficiaries.
 - School governing bodies must govern schools in terms of SASA, and in the interest of the school as a juristic person.
- The required distance between the school and the trust is known as the “arm’s length distance”.



“arm’s length distance”



- An arm’s length relationship means that the differences between school and trust, and between the activities of the school and those of the trust should be clearly identifiable, and that funds or other property of the two parties should be kept separate at all times.
- The basic principle is that transactions should not take place without counter-value.
- All transactions should be well documented and that there should be a distance between the parties entering into the contract.



In practice...

- Trustees
- Aim of the trust
- Contacts and documents
- Good communication / clear goals
- Dispute resolution



Documents on www.fedsas.org.za

- Trusts and Public Schools
- *Trusts en Openbare Skole*
- Example of lease agreement
- *Voorbeeld huurooreenkoms*





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