BLACKLEAF

2026 EDITION

BLACKLEAF FIDUCIARY & STATUTORY

Trust Administration *Handbook*

Trustee duties, record keeping and the errors we see most often, for trustees of South African trusts.

INTRODUCTION

A trust is only *as sound as its administration*.

A trust that is well drafted but badly run can fail the purpose it was set up for. Courts, the Master and the revenue authority look at how a trust actually operates, not only at the deed.

This handbook is for trustees, founders and advisers of South African inter vivos and testamentary trusts. It sets out what trustees must do, what records to keep, and the common failures to avoid. It is general information, and each trust is governed by its own deed.

Duty

What trustees must do, and how.

Records

What to keep, and for how long.

Errors

The failures that cause the most harm.

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The parties *and their roles*.

A South African trust has defined roles. Confusing them is the root of many problems.

PARTY	ROLE
Founder	Creates the trust and transfers the initial assets. Should not control it informally after it is set up.
Trustees	Hold and administer trust property for the beneficiaries, in line with the deed and the law.
Beneficiaries	Those who benefit, under the terms of the deed. Their rights depend on whether they are vested or discretionary.
Master of the High Court	Supervises trusts, issues letters of authority, and may call for reports and accounts.
Protector or independent trustee	Where the deed provides one, a check on the other trustees.

PRINCIPLES THAT FOLLOW FROM THE ROLES

- ✓ The trust property is separate from the personal estates of the trustees and the founder
- ✓ Trustees act jointly, unless the deed says otherwise
- ✓ Trustees must act in the interests of the beneficiaries, not their own
- ✓ An independent trustee can strengthen the trust, and is often expected by funders and the courts
- ✓ The trust deed is the starting point for every decision

Trustee *duties*.

Trustees owe duties that are personal to them. They cannot be delegated away.

Act in good faith

Exercise powers for the purpose the deed gives them, with honesty.

Care and diligence

Act as a prudent person would in managing someone else's property.

Impartiality

Treat beneficiaries fairly, within the terms of the deed.

Avoid conflicts

Do not use the position for personal benefit. Disclose and manage conflicts.

Keep trust property separate

Do not mix trust and personal funds or assets.

Account

Keep records and be ready to account to the beneficiaries and the Master.

Trustee duties are personal. Trustees can be held personally liable for breaches. They should understand the deed, take advice when needed, and not simply sign what is put in front of them.

Authority *and letters of authority*.

Trustees may act only with valid authority. Check it before every significant transaction.

ITEM	WHAT TO CONFIRM
Letters of authority	Current letters from the Master, naming every trustee who may act.
Change of trustee	Appointment or removal follows the deed, and the Master issues updated letters.
Bank mandates	Signatories match the trustees and the resolution.
Property transactions	Resolution authorising the transaction, signed as the deed requires.
Third parties	Banks, lenders and the revenue authority may ask for letters and a resolution.
Expired or missing authority	Act to regularise. Transactions without authority may be challenged.

BEFORE ANY SIGNIFICANT STEP

- [ ] Does the deed allow it?
- [ ] Is there a resolution, signed by the required trustees?
- [ ] Are the letters of authority current and complete?
- [ ] Is the step in the interests of the beneficiaries?
- [ ] Has tax and legal advice been taken where needed?

Meetings *and resolutions*.

Governance leaves a record. The record is the trustees' best protection.

ITEM	GOOD PRACTICE
Frequency	Meet at least once a year, and whenever a significant decision is needed.
Notice and agenda	Give notice, circulate an agenda and relevant papers in advance.
Quorum and voting	Follow the deed. Where it is silent, trustees act unanimously.
Minutes	Record the decision and the reasons. Sign and date them.
Written resolutions	Use for routine matters, signed by all required trustees.
Conflicts	Record disclosures of interest, and who abstained.
Follow-up	Track actions and report on them at the next meeting.

A MINUTE SHOULD SHOW

- ✓ Date, place and attendance
- ✓ What was decided, and why
- ✓ Documents considered
- ✓ Any conflict declared
- ✓ The signatures of the trustees

Money, assets *and distributions*.

The way trust money moves is the first place problems show up.

Separate accounts

The trust has its own bank account. Personal and business funds are not mixed in it.

Loan accounts

Loans to and from the trust are documented, with terms, and recorded in the accounts.

Distributions

Made under the deed, by resolution, recorded, and reflected in the tax return.

Trust assets

Held in the name of the trust, shown on an asset register, and insured.

Use by beneficiaries

Use of trust assets by a beneficiary is documented, on stated terms.

Investments

Follow the deed's powers and a stated approach to risk.

Take tax advice. Distributions, loans and the use of trust assets have tax and donations tax consequences. Confirm them with your tax adviser before acting.

Annual administration *cycle*.

Build the same routine every year, and keep proof of it.

WHEN	TASK
Start of year	Confirm trustees, letters of authority and bank mandates are current
During the year	Record every decision, loan and distribution as it happens
Year-end	Prepare financial statements, reconcile loan accounts and asset register
After year-end	Trustees approve the statements at a meeting, and sign them
Filing	Submit the trust income tax return and any provisional tax, in line with the revenue authority's notices
Records	Update beneficiary and beneficial ownership records
Review	Review the deed, any risk, and whether the trust still serves its purpose

Check the dates. Filing dates and requirements change. Confirm each with the authority's current notice, or with your tax practitioner.

Common *pitfalls*.

These are the errors we see most often when reviewing trusts.

01
Founder acts as owner

The founder treats trust assets as personal, which weakens the separation.

02
Trustees do not meet

There is no record that anyone exercised their own judgement.

03
Expired letters of authority

The trustees cannot show current authority to act.

04
Undocumented loans

Loan accounts grow with no terms, and become a source of dispute.

05
Distributions without resolution

Money is paid out with no decision recorded, and no tax treatment agreed.

06
Deed never read again

Trustees act from habit, not from the terms of the deed.

> *The trust deed gives the powers. The records prove how they were used.*

Trustee *health check*.

Score one point for each statement that is true today.

- [ ] Every trustee has read the deed
- [ ] Letters of authority are current
- [ ] Bank mandates match the trustees
- [ ] Trustees met in the last twelve months
- [ ] Decisions are minuted and signed
- [ ] Trust funds are in a separate account
- [ ] Loan accounts are documented
- [ ] Distributions are by resolution
- [ ] Asset register is up to date
- [ ] Financial statements are approved and signed
- [ ] Tax returns are filed on time
- [ ] Beneficiary and ownership records are current

11 to 12
Sound administration.

8 to 10
Close the gaps.

4 to 7
Regularise now.

0 to 3
Seek advice urgently.

Next step. BlackLeaf Fiduciary provides trust administration, records and compliance support, and works alongside your attorney and tax practitioner.

ABOUT BLACKLEAF

Begin with a *private conversation*.

BlackLeaf is a family-owned group offering corporate advisory, capital solutions, mergers and acquisitions, fiduciary services and family office support. Every mandate is led by a principal.

Capital Readiness Protocol

Finds and fixes structural defects before a financier or buyer does.

Capital & finance

Debt, equity and structured funding, placed with the right financiers.

Fiduciary & statutory

Compliance, trusts and company secretarial work, kept in order.

OUR COMMITMENTS

- Absolute discretion: mutual non-disclosure before any detail is shared
- One integrated team across advisory, capital and fiduciary work
- Led by a principal from first conversation to completion

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