

What are the duties of the trustees?

In the case of *Tijmstra NO v Blunt-Mackenzie NO and Others* the Transvaal Provincial Division of the High Court had to consider an application for the removal of trustees from office in terms of section 20(1) of Act 57 of 1988.

The Court held that a trustee must observe greater care in dealing with trust property than he does with his own, for, while a man may act as he pleases with his own property, he is not at liberty to do so with trust property. The standard of care to be observed is accordingly not that which the ordinary man generally observes in the management of his own affairs, but that of the prudent and careful man, the *bonus et diligens paterfamilias*. The learned judge furthermore described circumstances which would justify the removal of a trustee by a court in terms of the aforesaid section:

- “1. Where the trustee, without furnishing any explanation for his conduct, removes trust funds from an apparently safe investment with a financial institution and transfers them to his personal account. The Courts have often laid down that any person in a position of trust has no business to mix his own funds with trust funds. It is a very improper procedure for such a person to pay trust funds into his private account.
2. Where the trust deed requires that, if a decision is to be taken, especially the sale of immovable property, notice must be given to all the trustees so that they may decide thereon, and the trustee deliberately refrains from informing one of his co-trustees of the intended decision. Such conduct may very well amount to *mala fides*.
3. Where the trustee does not ascertain from the trust deed what the rights and obligations of the office of trustee entails.
4. Where the trustee treats the trust and its assets as his own, for example by selling the trust assets without the proper approval of the other trustees as required by the trust deed.
5. Where the trustee expresses no independent views about matters affecting the

trust, but relies entirely upon a dominant co-trustee and approves of his (wrongful) conduct.

6. Where the trustee, without objection, allows grave misconduct on the part of a co-trustee in the administration of trust property, and thus exercises no control at all over the trust property.”

Most of you will be aware of the extensive usage of trusts these days for estate planning and other purposes and many of you have perhaps already been appointed as trustees. This matter is a clear message that the appointment as a trustee should not be accepted lightly and if it is, that the duties should be taken seriously.

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