



Trusts Act 2019.

Your guide to what the
New Zealand Trusts Act 2019
means for you.

A new Trusts Act has now been passed in Parliament and become law.

It is called the Trusts Act 2019. The terms of the Act will be enforceable from 30th January 2021.

This Act replaces the Trustee Act 1956.

Introduction

For the first time in 60 years, the legislation around trusts has changed.

This new landscape will focus on making trust law more accessible and understandable for trustees and beneficiaries.



What you'll learn about in this guide:

- Reasons for having a trust in light of the Trusts Act
- Beneficiaries' rights to information
- Timeframes for the Trusts Act commencing
- What kinds of trusts are affected
- Common questions (FAQs)
- Who to contact for advice

What do you need to consider?

If you currently have a trust, it will be important to discuss the following with your professional adviser:

- Reasons for having a trust
- Clearly defined mandatory duties on trustees
- Rights to information for beneficiaries
- Reviewing your trust and whether it is still the right thing for you

Previous reasons you may have had a trust

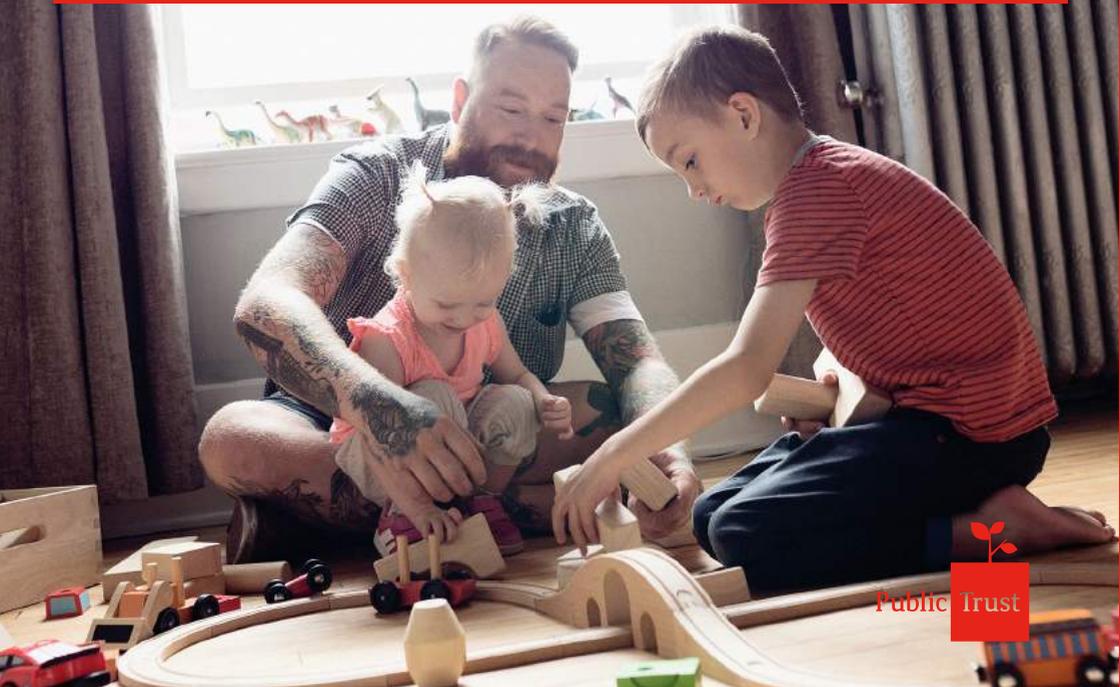
Previously, a trust may have been set up to:

- provide for family and protect assets
- keep property or assets in the family for the benefit of future generations
- reduce the chance of relationship property claims by future partners
- provide for children from previous relationships
- protect assets from unwanted claims against your estate
- protect family assets from unexpected business or professional claims
- structure your affairs effectively for tax
- maintain confidentiality of financial affairs
- prepare for a time when you might need residential care
- provide for beneficiaries with special needs.

Reasons for having a trust now

With the development of case law, and the courts' approach to trusts, trusts are now viewed as not providing the same level of protection of assets as they once did. There are now five key reasons for having a trust:

- Estate planning – minimising the risk of unwanted claims against your estate, provide for children from previous relationships or beneficiaries with special needs, wanting to not provide for children (preventing successful claims against estates).
- Keeping property or assets in family for future generations.
- Relationship property, alongside a contracting out (pre-nup) agreement.
- Creditor protection in particular situations.
- To formally protect beneficiaries with special needs proactively, and before estate administration.



Trustee duties

Trustee duties have now been set out in the Act. It is important all trustees understand their duties and the terms of the trust.

There are mandatory duties and default duties. The mandatory duties cannot be modified or excluded under the Trusts Act.

The **mandatory duties** are:

- know the terms of the trust
- act in accordance with the terms of the trust
- act honestly and in good faith
- act for the benefit of beneficiaries or to further permitted purpose of the trust
- exercise powers for proper purpose.

The **default duties** for trustees are to:

- invest prudently
- not to exercise power for own benefit
- consider exercise of power
- not to bind or commit trustees to future exercise of discretion
- avoid conflict of interest
- be impartial
- act for no reward or profit
- act unanimously.

Trustees will continue to have the right to determine which beneficiaries benefit from a trust and to what extent, as well as how the trust is managed. This simply means there are increased obligations to ensure that the trustee is accountable to the beneficiaries.

Increased beneficiaries' rights to information

From 30 January 2021 (unless exceptional circumstances apply), trustees will have a requirement to provide beneficiaries with basic trust information at the earliest possible time after the trust has been set up, including:

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

This information is to be provided without a beneficiary needing to ask for it.

Until 30 January 2021, trust information can be provided to beneficiaries if:

- agreement is reached by all co-trustees / settlors
- co-trustees / settlors agree to the trust covering the cost of providing this information.

The Trusts Act provides a procedure for when a trustee decides to give no information.

Trust information may be withheld from all beneficiaries only in exceptional circumstances.

On an ongoing basis, beneficiaries will need to be kept informed of the administration of the trust. Sharing of information with beneficiaries is not going to be a one-off event- it must be carried out regularly without the need for beneficiaries to ask.

What trusts will the Trusts Act affect?

The key kinds of trusts that will be impacted by these new changes are **family trusts and inheritance trusts**. **Wills** will also be impacted where there is no age of inheritance defined, and there are minor of age trusts.

Impact on family trusts, inheritance trusts and estates

The changes in the law will also change the age of majority (the default age that a person can inherit), and the maximum lifetime of a trust.

As the law currently sits, the age of majority is 20. This is the default age that a person can inherit if it is not defined in the guiding document. Under the new legislation, the age of majority will be changed to 18. This will apply to all wills, trusts and estates going forward, where there is no specific age stated.

The new law is also going to extend the maximum period of a trust from 80 years to 125 years. This will be the default maximum lifetime of a trust, unless it is otherwise defined in the Trust Deed.

This will come into effect at the date the new provisions become enforceable.

Frequently asked questions

What do I need to do if I have a house-only trust that I have had for many years, and I want to review my trust?

This is a common question. At the outset, we need to work out if a trust is still a good option for you. We need to establish the reasons that the trust was initially set up, and equally what the reasons are for the trust today.

It may be found that the house-only trust no longer offers the same protection that it once did, and you may wish to discuss this with your professional trustee for the best way forward.

What if I don't want to tell the beneficiaries that they are beneficiaries of the trust?

The new law will require the trustees to make the following information available to all beneficiaries of a trust, including an inheritance trust:

- (a) The fact the person is a beneficiary
- (b) The name and contact details of the trustees
- (c) The occurrence and details of each trustee appointment and change of trustees
- (d) The right of the beneficiary to request a copy of the trust terms.

There is a presumption that a trustee must make that information available to every beneficiary. Public Trust will be doing so in all trusts where it is a trustee

or co-trustee unless exceptional circumstances apply.

This may be the right time for you to think about and review whether your trust is still the right option for you or your family.

What do I need to do if the trust is going to be wound up?

If the trust is going to be wound up, we will let you know what documents need to be prepared, who needs to sign them, and what processes need to be followed. Where there is a house in the trust, conveyancing will need to be involved to complete the transfer of real estate from the trust back to the settlors (as primary discretionary beneficiaries). There will be a cost associated with this process.

Continued over

Frequently asked questions cont.

I want the trust to continue, but I don't want to be a trustee anymore because it's going to cause me unnecessary stress.

If this is the situation, the person who has the power as protector (or appointor in some trust deeds) may exercise their power to remove themselves/retire as trustee, and we can continue as sole trustee. As the professional trustee we will continue to ensure that the trust is being run to the new standards and we will explain to you how we will continue to run the trust with the new requirements.

What if Public Trust is a trustee of a trust, and the trustees want to review this?

In situations where a trustee wants to review Public Trust's involvement, then all trustees need to discuss the future trusteeship of the trust. As all trustees decisions need to be unanimous, Public Trust's input into any decision will be required at an early stage and will need to be involved in the process. If Public Trust ceases to be a trustee, costs associated with the change of trusteeship will be paid by the trust.

If there is a property owned within the trust, you will require Public Trust's input when you decide to deal with the property, for example:

- when a co-trustee dies
- when a co-trustee looks to borrow more money and wishes to use the trust property as security.
- when a co-trustee looks to sell the property

As Public Trust is a co-trustee and is registered proprietor, we will need to be actively involved in this process.



Have more questions?

If you have any questions about any of the content of this guide, please get in touch with your main contact at Public Trust, call us on **0800 371 471** or email **info@publictrust.co.nz**

We also provide regular updates on our Facebook page.



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www.publictrust.co.nz

We're committed to helping all New Zealanders plan for their future. We've been around for more than 140 years, so you can be confident that every Public Trust adviser has a wealth of knowledge and experience behind them. That's why more than 250,000 Kiwis already trust us to help them look after the things that matter most.