

Trusts, Wills & Estates

1. Trusts

1.1 The role of an *inter vivos* trust in preserving wealth

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.1.1 What is a trust			Case law summaries on trust essentials Table comparing trusts to other entities
1.1.2 What are the benefits of a trust			Potential benefits of a trust Control before and after a trust is formed Legal position relevant to control before and after a trust is formed
1.1.3 How are trusts taxed			Tax rates for 2017 financial year Taxation of trust income 2017 financial year
1.1.4 The future of trusts in South Africa			First Interim Report on Estate Duty
1.1.5 Foreign trusts			First Interim Report on Estate Duty

1.2 How are *inter vivos* trusts regulated

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.2.1 What legislation is relevant to trusts			Table comparing trusts to other entities
1.2.2 Common law applicable to trusts			Case law summaries on trust essentials
1.2.3 Common pitfalls	Letters of authority Letter to client discussing the control of property in a trust		Legal position relevant to control before and after a trust is formed Control before and after a trust is formed Case law summaries on trust essentials

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1.2 How are *inter vivos* trusts regulated

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.2.4 Registering a trust for tax	Form IT77TR – Application for registration as a taxpayer or changing of registered particulars: trust Example of income tax return for a trust (ITR12T)	Documents required to register a trust for income tax	How to complete the registration amendments and verification form (RAV01) Comprehensive guide to the ITR12T return for trusts Step by step guide to complete your trust return via eFiling Further guidance on completing form ITR12T (Sars website)

1.3 How to form an *inter vivos* trust

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.3.1 Essential contents of a trust deed			Department of Justice and Constitutional Development (Web) Case law summaries on trust essentials
1.3.2 Types of trusts	Sample trust for a single capital beneficiary – excluding parent's right Sample trust for a number of capital beneficiaries Sample trust for a single capital beneficiary – including parent's right		
1.3.3 The planner of a trust			Parties to a trust
1.3.4 The founder of a trust			Parties to a trust
1.3.5 The trustees of a trust	Sample clauses – trustee qualifications Sample clauses – excluding certain persons from being appointed as trustees Sample clauses – number of trustees		Case law summaries on trust essentials

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1.3 How to form an *inter vivos* trust

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.3.6 Beneficiaries of a trust	Letter of rejection Sample clause – prohibition against alienation		Parties to a trust Legal position with and without beneficiaries Case law summaries on trust essentials Rights of beneficiaries to trust property
1.3.7 Letters of wishes	Letter of wishes		
1.3.8 The application to the Master's Office	Form J401 – Trust registration and amendments Form J405 – Undertaking by auditor / accountant Form J344 – Undertaking and bond of security Form J417 – Acceptance of trusteeship by trustee	Registering an <i>inter vivos</i> trust	Chief Master's Directive 1 of 2012 – Payment fees due to the Master

1.4 Trustees of an *inter vivos* trust

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.4.1 The duties and powers of trustees			Case law summaries on trust essentials
1.4.2 Appointing trustees	Resolution of trustees – appointment of new trustees Deed of assumption – appointments Form J401 – Trust registration and amendments Form J417 – Acceptance of trusteeship by trustee Letters of authority Affidavit regarding lost letters of authority	Appointment of new trustees	Guidance on completing Form J401 Department of Justice and Constitutional Development (website)

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1.4 Trustees of an *inter vivos* trust

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.4.3 Removing trustees	Form J401 – Trust registration and amendments Letters of authority Affidavit regarding lost letters of authority Notice of removal as trustee Removing trustees		Case law summary: Kidbrooke Place Management Association and Another v Walton and Others NNO Guidance on completing Form J401 Department of Justice and Constitutional Development (website)
1.4.4 Trustees resigning	Trustee resignation letter Resolution of the trustees – resignation Deed of assumption – resignation and appointment Form J401 – Trust registration and amendments Letters of authority Affidavit regarding lost letters of authority	Trustees resigning	Guidance on completing Form J401
1.4.5 Trust resolutions	Sample of minutes of trustees' meeting Sample of a trust resolution		
1.4.6 Requesting a trust deed from the Masters Office	Sample letter to the Master requesting documents		Chief Master's Directive 2 of 2009
1.4.7 Litigating on behalf of a trust	Sample of a trust resolution Sample of minute authorising legal proceedings Sample clause – citation of trustees in legal proceedings		

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1.5 How to amend the trust deed of an *inter vivos* trust

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.5.1 Guidance from the trust deed	<p>Sample clause – amendment of trust deed by trustees</p> <p>Sample clause – amendment of trust deed by trustees and founder</p> <p>Sample clause – amendment of trust deed by trustees requiring third party consent</p>		Case law summary: <i>Potgieter v Potgieter</i>
1.5.2 Making the application	<p>Form J401 - Trust registration and amendments</p> <p>Deed of amendment</p>	Amending the trust deed	<p>Guidance on completing Form J401</p> <p>Department of Justice and Constitutional Development (website)</p>

1.6 Trusts created on death

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.6.1 The nature of a testamentary trust			Case law summary: <i>Braun v Blann</i>
1.6.2 How to create a testamentary trust	<p>Form J401 – Trust registration and amendments</p> <p>Examples of testamentary clauses from case law</p> <p>Letters of authority</p> <p>Form J417 – Acceptance of trusteeship by trustee</p>		Department of Justice and Constitutional Development (website)
1.6.3 Amendment of a testamentary trust instrument			Case law summaries on testamentary trust amendments

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1.7 Charitable trusts

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.7.1 Guidance on drafting the trust deed	Clauses required in the trust deed of a public benefit organisation	<p>Items that must be included in a charitable trust's trust deed</p> <p>List of clauses to include when drafting a charitable trust's trust deed</p>	
1.7.2 Obtaining a tax exemption for a charitable trust	Form EI1 – Application for approval of exemption from income tax		Sars: guidance on making the application to SARS (website)
1.7.3 Non-profit Organisations Act	Application for registration by a nonprofit organisation		<p>Nonprofit organisation's reporting duties</p> <p>Register online on the Department of Social Development (website)</p>

1.8 Termination of a trust			
Guidance Note	Forms & Precedents	Checklists	Other Resources
1.8.1 Grounds for terminating a trust			Case law summary: <i>Ex Parte Nicol and Another</i>

2. Donations

2.1 The role of donations in managing and distributing wealth

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.1.1 What are the benefits of donations			Transfer of assets to a trust
2.1.2 How are donations taxed			
2.1.3 Possible changes to the law			First Interim Report on Estate Duty

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2. Donations

2.2 How to make donations

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.2.1 What can be donated?			
2.2.2 Formalities in making a donation	Deed of donation inter vivos immovable property Deed of donation inter vivos of incorporeals Deed of donation inter vivos of movables Deed of donation mortis causa		

3. Wills

3.1 The role of the will in estate planning

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.1.1 Testate and intestate succession			Example of intestate succession Testate succession vs intestate succession
3.1.2 Legacies and inheritances			Testate succession vs intestate succession
3.1.3 The right to use property			Differences between fideicommissum and usufruct
3.1.4 Shares in companies and interests in close corporations	Sample clause – treatment of members' interests on death in an association agreement Sample clause – treatment of shares on death in shareholders' agreement		
3.1.5 The living will	Living will		

3. Wills

3.2 How to make a will

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.2.1 Who has capacity to make a will			Case law summaries: aspects related to the validity of wills
3.2.2 The formalities of making a will			Case law summaries: aspects related to the validity of wills
3.2.3 What is a codicil	Codicil		
3.2.4 Choosing executors			
3.2.5 Choosing administrators or trustees	Sample clauses – trustee exclusion Sample clauses – trustee exclusion Sample clauses – trustee qualifications		
3.2.6 Guardians for minor children	Sample clauses – guardian appointments		
3.2.7 Foreign wills			

3.3 Drafting the will

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.3.1 Overview of the will contents	Simple will Will with further provisions		
3.3.2 Revoking earlier wills	Revocation of earlier wills – language to use when drafting a will		
3.3.3 Wills of married persons	Sample 1 – mutual will specific bequests Sample 2 – mutual will entire estate Sample 3 – mutual will Sample 4 – mutual will		
3.3.4 Specific bequests	Bequests to multiple legatees Multiple bequests to one legatee Bequests including a usufruct Bequest to a trust		

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3. Wills

3.3 Drafting the will

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.3.5 The residue	Grant of residue to more than one legatee Clause for transfer of whole estate Grant of residue to one legatee Clause for residue after usufruct bequest Clause for residue to a trust		
3.3.6 Substituting heirs and legatees	Clause for substitution for entire estate Clause for substitution for specific bequests		Approved by author, no corrections
3.3.7 Accrual of benefits not taken up			Case law summary: Lello and Others v Dales NO
3.3.8 Collation of benefits given in a lifetime	Example of collation Sample clauses – collation		
3.3.9 Dealing with spouses of heirs	Sample clause – exclusion of benefit		
3.3.10 Providing for minor children	Sample clause – legacy in trust for minor Sample clause – inheritance in trust for minor Sample clause – appointment of guardian and financial provision		
3.3.11 Testamentary trusts	Sample trust – minor children Sample trust – surviving spouse and children		
3.3.12 Charitable bequests	Sample clauses – charitable bequests Sample clause – inheritance to a charity Sample clause – charitable testamentary trust		

3. Wills

3.3 Drafting the will

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.3.13 Nominating executors	Sample clause – nomination of one executor Sample clause – nomination of more than one executor		
3.3.14 Nominating trustees	Sample clause – nomination of trustees		

4. Administration of Estates

4.1 Executors

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.1.1 Reporting the estate	Form J294 – Death notice Form J243 – Inventory Form J192 – Next-of-kin affidavit Form J190 – Acceptance of trust as executor Form J155 – Undertaking and acceptance of master's directions by executor/ executrix Nomination to act as executor or Master's representative estate Form J312 – Undertaking and bond of security Declaration of subsisting marriages or cohabitation relationships Declaration for estate being reported in terms of section 18(4) List of creditors	Required documents for the appointment of executor checklist (word) Documents required for the appointment of an executor	Chief Master's Directive 2 of 2015
4.1.2 Assuming a co executor	Example of a clause permitting assumption Example of a deed of assumption Special power of attorney		

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4. Administration of Estates

4.1 Executors

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.1.3 The role and powers of the executors			
4.1.4 Administration of a small estate	Form J170 – Letters of authority Form J155 – Undertaking and acceptance of Master's directions by executor/ executrix Declaration for estate being reported in terms of section 18(3)		Chief Master's Directive 3 of 2015
4.1.5 Administration of an intestate estate			Chief Master's Directive 3 of 2015 Calculation of a child's share in intestate succession

4.2 Estate duty

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.2.1 What is estate duty			First Interim Report on Estate Duty
4.2.2 What is subject to estate duty			
4.2.3 How is estate duty calculated			Estate duty formula (word) Example of estate duty calculation and apportionment thereof Estate duty formula in terms of the Estate Duty Act (pdf)
4.2.4 Deferring payment of estate duty			First Interim Report on Estate Duty

4. Administration of Estates

4.3 Capital Gains Tax

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.3.1 What is capital gains tax			Tax rates for 2017 financial year SARS Comprehensive Guide to CGT
4.3.2 Deceased estates subject to capital gains tax			
4.3.3 Exemptions from capital gains tax	Asset list		
4.3.4 How is capital gains tax calculated			CGT process flowchart

4.4 Claims against the estate

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.4.1 Identifying and distinguishing claims	Advertisement in terms of section 29 of the Administration of Estates Act of 66 of 1965 List of creditors	Documents and information required by the executor	
4.4.2 Types of claims			
4.4.3 Late claims			
4.4.4 Disputed and rejected claims	Creditor's affidavit		
4.4.5 Solvent and insolvent estates	Letter to creditor in terms of section 34(1) of the Administration of Estates Act of 66 of 1965		

4.5 Debtors of the estate

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.5.1 Dealing with debtors of the estate	Claims in favour of the estate Form J243 – Inventory Example of an inventory Sample letter to Master requesting authority to accept a compromised amount in settlement of the amount owed by the debtor to the estate Sample letter to the Master		

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4. Administration of Estates

4.6 Heirs and legatees

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.6.1 Types of heirs			
4.6.2 Minors	Example of an award to a minor child		
4.6.3 Surviving spouse	Example of an award to a surviving spouse		

4.7 Assets of the estate

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.7.1 Executors duties	Letter to Master requesting extension First, supplementary and amended liquidation and distribution account headings Example of a heading for the liquidation and distribution account where the deceased is married in community of property Example of an executors note	List of documents needed to open estate bank account Documents and information required by the executor	Chief Masters Directive 4 of 2011
4.7.2 Movable assets	Advertisement in terms of section 35		
4.7.3 Immovables	Form REV246 – valuation of immovable property	Checklist of documents to provide to a conveyancer	
4.7.4 Claims in favour of the estate	First letter to bank Second letter to bank		
4.7.5 Appraisals	Form REV246 – valuation of immovable property		

4.8 Liabilities of the estate

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.8.1 Claims against the estate	Letter to the Master requesting extension Liquidation and distribution account	List of documents for updating of bank details with SARS	SARS Guide to change of banking details

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4.9 Administration expenses and taxes

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.9.1 Costs and expenses	Advertisement in terms of section 35 of the Administration of Estates Act of 66 of 1965 Form REV267 – Return of information required in terms of section 7 Example of letter to SARS requesting an extension of time within which to pay estate duty		Chief Master's Directive 1 of 2012 – Payment fees due to the Master
4.9.2 Executors fees			
4.9.3 VAT and estate duty			Example of estate duty calculation and apportionment thereof Chief Masters Directive 3 of 2009

4.10 Cash flow in the estate

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.10.1 Cash surplus	Example of a recapitulation statement		
4.10.2 Cash shortfall	Example of a recapitulation statement		

4.11 Distribution

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.11.1 Identity of heirs	Example of a distribution account		
4.11.2 Details of reasons for and conditions of the award	Example of a distribution account		

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4.12 Redistribution agreements

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.12.1 What is a redistribution agreement	Example of a redistribution agreement	Items to include in a redistribution agreement	
4.12.2 Circumstances where redistribution is permissible	Example of a redistribution agreement		Registrars' Conference Resolutions of 2006
4.12.3 Pitfalls of redistribution			Registrars' Conference Resolutions of 2006

4.13 Income and expenditure after date of death

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.13.1 Income	Example of an income and expenditure account		
4.13.2 Expenditure	Example of an income and expenditure account		

4.14 Remaining balance

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.14.1 Balance available for distribution	Liquidation and distribution account		

4.15 Liquidation and distribution account

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.15.1 Outline of the liquidation and distribution account			The estate administration process Example of estate duty calculation and apportionment thereof
4.15.2 The heading of a liquidation and distribution account	Main heading in a liquidation and distribution account		
4.15.3 Adiation vs repudiation	Sample of adiation or repudiation		
4.15.4 Time frames granted to the executor	Example of letter to the Master requesting an extension Example of a letter requesting to be removed as executor		

4. Administration of Estates

4.15 Liquidation and distribution account

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.15.5 The executors certificate and executors notes	Executor's certificate Example of executor's note Executor's note		
4.15.6 Sub headings	Form REV267 – Return of information required in terms of section 7 of the Estate Duty Act 45 of 1955 Liquidation and distribution account		

4.16 How to deal with fiduciary assets

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.16.1 Fiduciary assets in the liquidation and distribution account	Example of a fiduciary assets account		
4.16.2 Estate duty in respect of fiduciary assets	Example of the calculation of the value of a limited interest		

4.17 Discharge of the executor

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.17.1 Executors discharge	Sample letter to the Master requesting a formal discharge Sample of a section 35 affidavit Sample of a conveyancer's certificate		Example of a filing notice issued by the Master