



# The rights of trust beneficiaries

**H**igh expectations of trust beneficiaries to demand benefits from a trust are unrealistic, as in the common type of trust, a trust beneficiary is not given any rights to the property or benefits thereof.

Suppose the trust is a discretionary trust (which is the most common type of trust in South Africa). In that case, the trustees have the discretion when, with how much, and if they want to benefit a particular beneficiary. It will be within their powers to offer a benefit to one of the beneficiaries and not to another. The beneficiary can only hope that the trustees will decide in their favour and offer a benefit.

If the beneficiary previously received a benefit from the trust, it further does not mean that they can demand another benefit. They only had a right to the benefit they previously accepted. Again, they can only hope that another benefit will be distributed to them. The trustees would be free to amend the trust as stipulated in the trust deed without the consent of the beneficiaries, as they have no say in the trust administration (see *R van Zyl 2019 SALJ Vol. 136(4)*. "The question of rights, acceptance and amendments of inter-vivos trust in terms of the stipulatio alteri").

If a trustee offers a benefit to a beneficiary, the beneficiary can decide to decline or accept the benefit. If he/she accepts the benefit, the beneficiary gets a vested right to that particular benefit. No changes can be made by the trustees to the trust that would affect the pending benefit that the beneficiary accepted while the benefit is made over.

Trustees must be cautious if the benefit offered to the beneficiary is a recurring benefit, such as a "monthly" payment (*Crookes v Watson 1956 (1) SA 277 (A)*) or a "rotational" visit (*Griesel v De Kock 2019 (5) SA 896 (SCA)*) to a farm. Once the beneficiary accepts this recurring benefit, they get a vested right to the recurring nature of the benefit as well. This cannot be taken away from them without their consent.

In a vested or a *bewind* trust, a beneficiary would have vested rights at the creation of the trust, and the trustees are bound to deliver the benefits to them as stated in the trust deed. The trustees, in this case, do not have the discretion as to how much or when the benefits must be delivered but are bound by the proportion or description stated in the trust deed.

If a condition is set in a trust deed for an uncertain future event to occur before the beneficiary can receive the benefit, ie turning

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a certain age or getting a certain qualification, the beneficiary has more than a hope to benefit. The beneficiary now has a "contingent right" that must be protected while the condition plays out. The trustees would not be free to handle the benefit in a way that would negatively affect the beneficiary's right to the benefit. In these cases, the beneficiary's consent would be needed to make any amendments to the trust that would affect their particular benefit.

In drafting a trust deed, it is, therefore, imperative to understand the different rights that could be given to trust beneficiaries. The intended rights should correspond with the aim of the trust to prevent trust beneficiaries from gaining control of the trust, which may never have been the intention of the trust founder. ■



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