

THE TRUSTEE'S DUTY TO ACCOUNT (and the who, why, what and when thereof)

4 JUNE 2025



THE BUCK PAUSES, BUT
DOES NOT ACTUALLY
STOP HERE.

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DAVE COVERLY

"MISS WILCOX, SEND IN SOMEONE TO BLAME."

WHO (and to WHOM) should (be) account(ed)?

- WHO should account?
 - Any person who is in a fiduciary relationship with others
 - For example:
 - Agent and Principal
 - Attorney / Accountant and Client
 - Directors and Company / Shareholders
 - Executor and Legatee and/or Heir
 - Trustee and Beneficiary



WHO (and to WHOM) should (be) account(ed)?

- To WHOM should be accounted?
 - Master of the High Court
 - Section 16 of the Trust Property Control Act, 57 of 1988:

“A trustee shall,, account to the Master to his satisfaction and in accordance with the Master’s requirements for his administration and disposal of trust property...”



WHO (and to WHOM) should (be) account(ed)?

- To WHOM should be accounted?
 - Co-Trustees
 - Steyn NO & Others v Blockpave (Pty) Ltd [2015] JOL 34486 (FB)

“The trustees have to decide, participate and act together as one in dealing with the affairs of the trust, ...”



WHO (and to WHOM) should (be) account(ed)?

- To WHOM should be accounted?
 - Beneficiaries
 - With vested rights
 - Doyle v Board of Executors [1999] 1 All SA 309 (C)

“... the agents duty to give and accounting to his principal of all that he knows and has done in the execution of his mandate and with his principal’s property.”



WHO (and to WHOM) should (be) account(ed)?

- To WHOM should be accounted?
 - Beneficiaries
 - With contingent rights
 - Kruth v Rall and Others 2023 (6) SA 514 (WCC)

“... even a contingent beneficiary has a vested interest in the proper administration of the trust...”



WHO (and to WHOM) should (be) account(ed)?

- To WHOM should be accounted?
 - Representatives
 - *Locus Standi*
 - Mohle N.O and Others v R.L.N and Another (A43/2023) [2024] ZAMPMBHC 1 (9 January 2024)

“... being the representative of her minor child and in her capacity as executrix of her deceased husband’s estate, she had the locus standi to bring the application.”



WHO (and to WHOM) should (be) account(ed)?

- Protection of Personal Information Act, 4 of 2013?



WHY should the Trustee account?

- What forms the BASIS of the duty to account?
 - *Snyman v De Kooker and Others* NNO [2024] 4 All SA 47 (SCA)

“In our law, a plaintiff is not entitled to an account unless he or she can show that the defendant stands in a fiduciary relationship to them, or that some statute or contract imposes a duty to render the account.”



WHY should the Trustee account?

- What forms the BASIS of the duty to account?
 - Fiduciary Relationship / Office
 - Merriam-Webster:

“a relationship in which one party places special trust, confidence, and reliance in and is influenced by another who has a fiduciary duty to act for the benefit of the party”



WHY should the Trustee account?

- What forms the BASIS of the duty to account?
 - Statutory - Trust Property Control Act, 57 of 1988
 - Section 11: Registration and identification of trust property
 - Section 16: Master may call upon trustee to account
 - Section 17: Custody of documents
 - Section 19: Failure of trustee to account or perform duties



WHY should the Trustee account?

- What forms the BASIS of the duty to account?
 - Common law and/or Case law
 - Doyle v Board of Executors [1999] 1 All SA 309 (C)
 - Kruth v Rall and Others 2023 (6) SA 514 (WCC)
 - Mohle N.O and Others v R.L.N and Another (A43/2023) [2024] ZAMPMBHC 1 (9 January 2024)
 - Snyman v De Kooker and Others NNO [2024] 4 All SA 47 (SCA)



WHY should the Trustee account?

- What forms the BASIS of the duty to account?
 - Court Order
 - Mabikwe v ABSA Trust Ltd [2019] ZAGPJHC 311 (5 September 2019) - par 43

“The statement provided by the respondent in its answering papers is not satisfactory and the applicant is entitled to a proper accounting of how the trust funds have been utilised and to hold the first respondent to its fiduciary duties.”



WHY should the Trustee account?

- What forms the BASIS of the duty to account?
 - Contract
 - Trust Deed

“Every Beneficiary of the trust shall on request be entitled to a copy of the annual financial statements of the trust.”



WHY should the Trustee account?

- Promotion of Access to Information Act, 2 of 2000?



WHAT does account entail?

- RIGHT to an account has two distinct concepts:
 - Substantive - Right to accounting
 - Section 9: Care, diligence and skill required of trustee
 - Fiduciary Relationship / Office



WHAT does account entail?

- RIGHT to an account has two distinct concepts:
 - Procedural - Remedy of giving an accounting
 - Doyle v Board of Executors [1999] 1 All SA 309 (C)

“He [the trustee] must justify his actions and conduct. If this, by circumstance, falls to be done in court, then, to put it in evidential terms, he bears the onus of demonstrating the proper discharge of his office.”



WHAT does account entail?

- DEGREE of the account will depend on the circumstances
 - Doyle and Another v Fleet Motors PE (Pty) Ltd [1971] 3 All SA 550 (A)

“The degree or amplitude of the account to be rendered would depend on the circumstances of each case.”



WHAT does account entail?

- What DEGREE of accounting is required:

- Statutory

- Section 16 of the Trust Property Control Act, 57 of 1988:

“...any book, record, account or document relating to his administration or disposal of the trust property and shall to the best of his ability answer honestly and truthfully any question put to him by the Master in connection with the administration and disposal of the trust property.”



WHAT does account entail?

- What DEGREE of accounting is required:
 - Common law and/or Case law
 - *Snyman v De Kooker and Others* NNO [2024] 4 All SA 47 (SCA)
 - “*keep regular accounts*” of transactions
 - “*keep accounts up to date*”
 - Financial statements



WHAT does account entail?

- What DEGREE of accounting is required:
 - Common law and/or Case law
 - Mohle N.O and Others v R.L.N and Another (A43/2023) [2024] ZAMPMBHC 1 (9 January 2024)
 - Documents used in the calculations of amounts reflected in the financial statements



WHAT does account entail?

- What DEGREE of accounting is required:
 - Common law and/or Case law
 - Doyle v Board of Executors [1999] 1 All SA 309 (C)
 - Needs to be sufficient



WHAT does account entail?

- What DEGREE of accounting is required:
 - Common law and/or Case law
 - Kruth v Rall and Others 2023 (6) SA 514 (WCC)
 - Should not be “*extensive and unreasonably wide-ranging*”
 - In other words no “fishing expedition”



WHEN should the Trustee account?

- ALWAYS
 - At request of the Master
 - In execution of a Court Order
 - At request of Co-Trustee
 - At request of Beneficiary



WITH that said about “to account”...

- Fiduciary Relationship / Office = Duty to account
- Remember the “GOLDEN RULE”

“to always act with honesty, integrity and utmost good faith”



WITH that said about “to account”...

- To follow the “GOLDEN RULE” might not be enough...
- To prove that the “GOLDEN RULE” was followed is equally important

“justice must both be done and must be seen to be done”





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service to the letter!

questions?

contact@literatimlegal.co.za

www.literatimlegal.co.za

