

The Rights of Beneficiaries to access and view Trust Documentation

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Trustees of a trust have strict and sometime onerous obligations upon them. They must act properly in accordance with the trust instrument and discharge their obligations under the *Trusts Act Qld (1973)*.

Many families or small business operations structure their financial and business arrangements through Unit Trusts or Discretionary Trusts. Sometimes, there can be conflict between beneficiaries identified in a trust document and trustees, regarding access to the documents and financial accounts of the trust.

Trustees need to be alert to the fact that they have obligations to beneficiaries to produce these documents upon being reasonably requested to do so. If there is significant cost in producing some of the documents, then the beneficiary may be asked to cover the costs of access to the documents or the preparation of copies.

It is well established by the *Trust Documents Rule* that the prima-facie right to inspect trust documents and accounts by beneficiaries arises by virtue of the fiduciary duty owed by the trustee to the beneficiary. See for example *Re: Bosworth (1889) 58 LJ Ch432* and *Re: Londonderry's settlement [1965] Ch918*.

In *O'Rourke v. Derbyshire [1920] AC 581*, Lord Wrenbury, commented at page 626:

"The beneficiary is entitled to see all trust documents because they are trust documents and because he is a beneficiary. They are in a sense his own. Action or no action, he is entitled to access them".

The position is equally clear in Australian Law. For example, in *Re: Simersall; Blackwell v. Bray (1992) 35 FCR584*, His Honour Gummow J (at page 587-588) referred to the following passage in Scott on Trusts:

"The trustee is under a duty to the beneficiaries to give them on their request at reasonable times, complete and accurate information as to the administration of the trust. The beneficiaries are entitled to know what the trust property is and how the trustee has dealt with it. They are entitled to examine the trust property and the accounts and vouchers and other document relating to the trust and its administration. Where a trust is created for several beneficiaries, each of them is entitled to information as to the trust".

In the Decision of *Schmidt v. Rosewell Trust Ltd [2003] UKPC 26*, the Court, in agreeing with the Judgment of the New South Wales Court of Appeal in *Hartigan Nominees Pty Ltd v. Rydge (1992) 29 NSWLR405*, said as follows:

"The more principled and correct approach is to regard the right to seek disclosure of trust documents as one aspect of the Court's inherent jurisdiction to supervise, and if necessary to intervene in, the administration of trusts. The right to seek the Court's intervention does not depend on entitlement to a fixed and transmissible beneficial interest".

It is important to note that in a Discretionary Trust, a trustee is not obliged to provide documentation to a beneficiary, regarding the manner in which the trustee has exercised his/her discretion (in accordance with the terms of the trust deed) to distribute income or capital to beneficiaries or classes of beneficiaries.

If you have any enquiries regarding your obligations as a trustee or your rights as a beneficiary, please feel free to contact us.

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