News | Rights of Beneficiaries of a Discretionary Trust to Documents

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A beneficiary of a Discretionary Trust does not have a fixed interest in the Trust.

A beneficiary only has a right to be considered by the Trustee, when the Trustee is determining who to distribute income or capital to, and in what proportions.

A Trustee is always bound by the terms of the Trust Deed, which sets out the rules which govern the Trust.

Access to documents

It is well recognised that beneficiaries are able to access Trust documents (and must be provided with them upon request).

A Trust document includes:

- trust tax returns;
- profit and loss statements for the Trust;
- balance sheets for the Trust; and
- any other document that might verify the representations made in the above documents (such as bank statements, share register statements or other source documents).

Beneficiaries are also entitled to be provided with copies of Minutes of Meeting made by the Trustee in its determination of how and to who Trust distributions are to be made, and also as to how the Trust is to be administered.

The above of course, is subject to any express provision in the Trust Deed preventing the Trustee from being able to disclose such documents.

Generally, beneficiaries are not entitled to access legal advice obtained by the Trustee or the reasons for the decision(s) of a Trustee.

If a beneficiary feels that they are shut out or are not being provided with full disclosure of Trust documents to which they are entitled, they have a right to bring court proceedings against the Trustee to compel the production of Trust documents. A request must first be made by the beneficiary to the Trustee, and the cost of producing those documents is generally to be borne by the beneficiary.

If an application is issued, then, subject to the terms of the relevant Trust Deed, the Court has discretion as to what documents are to be given by a Trustee to the beneficiary. The Court also has discretion as to whether the Trust, or the Trustee personally, is liable for the costs of a proceeding, particularly if the Trustee has unreasonably withheld the requested trust documents from a beneficiary.

The Court’s attitude is changing as to what documents can be provided to a beneficiary. The Court is
erring on the side of full disclosure.

If you are a beneficiary of a Trust or a Trustee of a Trust and you require advice please contact the Estate Group on 03 8600 8885.

For information about how we can assist you in Estate Group please visit our Services section.