



TRUSTEES CAN MANIPULATE A TRUST

Interesting facts:

There are 570 million commercial farmers in the world of which 500 million are run by families. In South Africa 96% of commercial farmers are family farmers.

Phia van der Spuy from TRUST-EEZE answers questions from André Diederichs, Chief Convener of FABASA

WHAT IS THE ROLE OF TRUSTEES?

The trustees are the guardians of a trust's assets. They are also the decision-makers of a trust"

HOW CAN TRUSTEES MANIPULATE A TRUST?

Most trust deeds allow for majority voting, which means that the majority of trustees can out-vote the minority. This is practical for day-to-day decisions,

as it may not always be possible for all trustees to agree on all matters. It is practical to allow a majority vote for day-to-day decisions, but to reserve unanimous voting for important decisions, such as the distribution of large amounts of capital to beneficiaries.

The manipulation of the appointment or removal of a co-trustee by trustees can swing the majority voting in favour of a certain group of trustees, as a result of such appointment or removal. The result is an unintended consequence, which was never anticipated by the founder. Often trust deeds provide trustees with a power of assumption. This means that trustees can appoint additional trustees to act with them. A power of assumption may be provided unconditionally or only on the happening of a certain

event, such as once a vacancy occurs. It is important to consider the terms of the trust deed as there may be other requirements impacting the trustees' power of assumption, such as a requirement to have a minimum number of trustees

WHAT IS THE FOUNDER'S RESPONSIBILITY?

The founder should ensure that the trust deed, the constitutive charter of the trust, deals in sufficient detail with the appointment and removal of trustees. If it does not, trustees may manipulate the trust and may cause the objective of the trust not to be met. Many court cases deal with the abuse by trustees of trust assets and the appointment and removal of trustees to influence voting.

<http://trusteeze.co.za/article/trustees-can-manipulate-a-trust>

