

A testamentary trust is created by a will and comes into existence when the testator dies. The trustees may not open a bank account, sign anything or receive assets until the Master of the High Court issues Letters of Authority. Work through this checklist in order, because each step depends on the one before it.

1. Before you apply

- ☐ The estate has been reported to the Master and Letters of Executorship have been issued.
The trust is created by the will, which sits in the estate file, so the estate comes first.
- ☐ The will has been read carefully and the trust clauses noted.
Who the trustees are, what powers they have, when the beneficiary takes the capital, whether decisions are by majority, and whether security is excused.
- ☐ Any drafting errors or unclear clauses in the will have been identified.
Deal with them in the covering letter before the Master raises them as a query.
- ☐ The trust has been given a name, if the will does not name it.
Use exactly the same wording everywhere afterwards, including the estate account and the title deed.
- ☐ Each nominated trustee has agreed to act.

2. Founding documents for the Master

- ☐ Copy of the will, certified by the Master's office that accepted it.
The will is the trust instrument. There is no separate trust deed and no founder to sign anything.
- ☐ Certified copy of the death certificate.
- ☐ Certified copy of the Letters of Executorship, showing the estate number.
- ☐ Trust Registration and Amendments Form (J401), completed.

3. For each trustee

- ☐ Original signed Acceptance of Trusteeship (form J417).
Originals, not scans. The Master will not accept copies.
- ☐ Certified copy of an identity document, clear and legible.
A trustee abroad can have copies certified by a solicitor, notary or the South African High Commission.
- ☐ Full names, residential address, email address and telephone number.
- ☐ A South African address for service for any trustee living outside the country.
Usually the attorney's office, as required by section 5 of the Trust Property Control Act.

4. For the beneficiary

- ☐ Certified copy of the birth certificate or identity document.
- ☐ Full names, identity number and date of birth.
- ☐ Beneficiary declaration form, completed.

5. Security and the bank

- ☐ Motivation for exemption from furnishing security, signed by all the trustees.
Lodge this where the will says no security is required. The Master keeps a discretion to insist on it anyway.
- ☐ The name of the bank at which the trust account will be opened.

6. Lodging the application

- ☐ The application goes to the Master's office that holds the will and the deceased estate.
- ☐ The covering letter explains that this is a testamentary trust and not a living trust.
It should deal with the will as trust instrument, the deceased founder, jurisdiction, and where the trust assets will come from.
- ☐ A complete file has been lodged, with nothing left to follow.
Allow about four to six weeks. Queries send the file to the back of the queue. There is no fee for a testamentary trust.

Watch for these three queries

1. Uncertified or illegible copies, which is the most common cause of delay.
2. Security, where the will is silent or ambiguous about it.
3. Whether at least one trustee is independent of the family.

7. Once the Letters of Authority are issued

- ☐ Check that the trust name, the trust number and the trustees' names on the document are all correct.
A testamentary trust number starts with MT. A living trust number starts with IT.
- ☐ Open the trust bank account, and keep trust money entirely separate from personal money.
- ☐ Load the beneficial ownership register on the Master's online system.
This duty only arises once the trustees are authorised, and the information cannot be lodged on paper.
- ☐ Register the trust with SARS and diarise its tax returns.
- ☐ Appoint an accountant to prepare annual financial statements.
- ☐ Record every trustee decision in writing, and give every trustee notice of every meeting.
A decision that is not recorded is very hard to defend years later.

8. Handing the assets over

- ☐ The liquidation and distribution account awards the inheritance to the trustees by name.
- ☐ The cash is paid into the trust bank account and the trustees acknowledge receipt.
- ☐ Any immovable property is transferred, with the terms of the will endorsed against the title deed.
Sections 40 and 42 of the Administration of Estates Act deal with the endorsement and the conveyancer's certificate.

Need a hand with the application?

We register testamentary trusts and wind up deceased estates every week.
Call +27 (0)11 646 0335 or email roy@bmalaw.co.za and we will get it moving.