



## TRUSTEES CAN'T ESCAPE THEIR FIDUCIARY OBLIGATIONS

Phia van der Spuy: WE GUIDE YOU

# FABASA

*A trustee has a responsibility to guard the assets of others with a higher degree of care than he does his own.*

John Ashcroft

"There is no magic in the term 'fiduciary duty'".

This is what the judge said in the *Phillips v Fieldstone Africa (Pty) Ltd* case of 2004. In carrying out their duties, trustees fulfil a fiduciary position. A fiduciary duty is an onerous, legal obligation of a person managing property or money belonging to another person to act in the best interests of such a person. A fiduciary relationship arises from the nature of the actual relationship undertaken.

**T**he main components of a trustee's fiduciary duty under our law are:

**1. The duty of care (Section 9(1) of the Trust Property Control Act).** It is interesting to note that the fiduciary duty of a trustee must not be confused with the duty of care, diligence and skill required of a trustee in terms of Section 9(1) of the Trust Property Control Act. A fiduciary duty does not necessarily demand competence and skill when someone manages the affairs of another. Although it is accepted that a trustee's general fiduciary duty arises from, or is equivalent to, the duty of care, Section 9(1) is an added duty imposed on trustees and is, therefore, in addition to the common law fiduciary duty of a trustee.

