

Trustees: Duties, powers and responsibilities

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Trustees are the legal owners of trust property which they hold on behalf of individuals who are entitled to benefit from the trust property as beneficiaries.

A trust can be created by an individual during their lifetime, established under a Will, or created by order of the court. Each trust will have its own rules, usually set out in the trust deed, which will determine the nature of the interest that each beneficiary has. A bare trust holds assets for specific individuals absolutely; a life interest trust holds assets held for one beneficiary who receives all of the income during their lifetime, with capital assets passing to others on the death of the life beneficiary; a discretionary trust with assets held by trustees who have discretion as to when and to whom income and capital will be paid. All trusts are subject to taxes, and some trusts have specialist taxation treatment, such as trusts created to hold awards following personal injury, trusts for qualifying disabled persons, and trusts for bereaved minors.

Whatever the type of trust, the role of 'trustee' is a position of responsibility, and each trustee will have legal and fiduciary duties which must be fulfilled and powers they should consider using. This document provides a basic overview of some of a trustee's duties, powers and responsibilities, but in reality the role of a trustee varies from trust to trust. We recommend that trustees seek appropriate legal advice to ensure that they are complying with all the obligations relevant to each specific trust for which they are responsible.

Duties and responsibilities

There are a number of duties imposed on trustees by statute, and the trust documentation can vary these statutory duties, and is also likely to impose additional duties on trustees. In addition to other duties, trustees generally should:

- follow the terms of the trust document – trustees should familiarise themselves with this;
- act fairly and reasonably towards the beneficiaries, considering and balancing the interests of all of the beneficiaries. However, this does not mean that they must treat all of the beneficiaries equally;
- not place themselves in a position where their own interests conflict, or there is a real possibility that they will conflict, with the interests of the beneficiaries;
- ensure that they are informed of all relevant circumstances before making any decisions;
- not profit from the trust at the expense of the beneficiaries;
- act confidentially, and not to misuse confidential information;
- keep a record of all transactions and an accurate statement of trust property – beneficiaries may request copies, and trustees might be obliged to share this information with the beneficiaries upon demand;
- exercise their own judgement, they must not be dictated to by others and must not delegate the exercise of their powers (unless otherwise permitted by statute);
- exercise reasonable care and skill, having regard to any special knowledge or experience that they have or hold themselves out as having;
- inform all adult beneficiaries of the existence of the trust and the nature of their interest, unless purely discretionary;
- be aware of money laundering provisions; and
- be responsible for reporting and paying tax owed by the trust, on its behalf.

Liability

Trustees are personally liable for the liabilities of a trust, such as a contract entered into on behalf of a trust and claims made against the trust property. A trustee's personal liability is not limited to the value of the trust property.

If a trustee acts outside of their powers or does not fulfil their duties, they may be held liable for breach of trust and will have to make good personally, the loss incurred by the trust.

Powers

Unless otherwise provided in the trust documentation, trustees must act unanimously in the exercise of their powers.

Trustees' powers are conferred by statute and by the trust documentation. It is strongly recommended that trustees take professional advice to understand the limits of their powers, and what powers are available for them to use. Trustees will be personally liable for any loss caused by actions that they take which are outside of their powers.

In modern trusts, trustees have the power to make any kind of investment, but in exercising this power they must:

- exercise a standard of care as is reasonable in the circumstances;
- look at both the kind of investment (e.g. shares) and the particular investment of that kind (e.g. shares in 'X' company) when considering suitability;
- have regard to the need to diversify investments (i.e. range of investments with different risk levels);
- review the investments from time to time; and
- seek and obtain proper advice about how to exercise the power of investment.

Other considerations

Just because someone has been appointed as a trustee, doesn't mean that they have to continue to act. A person can retire as a trustee and someone else can be appointed as a trustee in their place, provided the specific formalities of statutory provisions and the trust deed are followed. Trustees should take legal advice on how to do this appropriately.

Taking professional advice in respect of dealing with the trust, such as preparing deeds to exercise powers, annual accounts and tax returns, is a reasonable expenditure that can be paid for out of trust funds.

Trustees must ensure that any trust property is in the names of the trustees. For example, if a house is held on trust, the trustees need to be named as the legal owners. If there is cash, this should be held a separate trust bank account. Where there is a change of trustees, all of the trust property needs to be transferred into the new trustees' names.

If the trustees decide to appoint (pay) assets / money out of the trust to a beneficiary outright, this needs to be formally documented, and we would recommend the trustees seek legal and taxation advice prior to making such distributions.

Contact

If you need assistance in respect of a trust, please contact Melissa Maple on **03700 868991** or at **melissa.maple@shoosmiths.co.uk** or Charlotte Dunn on **03700 868323** or at **charlotte.dunn@shoosmiths.co.uk**