

Wills, Trusts and Probate Briefings

Trustees Responsibilities and Duties

The role of the Trustee is a crucial one in administering trusts. The Trustee will hold property for the benefit of the beneficiaries of the trust and must carry out the powers and duties as required by the trust document and by law.

Generally anyone can act as a trustee as long as they are over the age of 18 years, have the mental capacity to do so and are not bankrupt, convicted of any offence of dishonesty, deception or disqualified from acting as a company director. There is also no minimum number of trustees required for a valid trust. However, there must be a minimum of two trustees to sell land and in respect of a settlement or trust of land there should not be more than four trustees.

General Duties

Trustees owe a fiduciary duty to the beneficiaries of a trust. They must act loyally, honestly and in good faith and must not let their personal interests conflict with those of the beneficiaries. There are many general duties that a trustee must fulfil, which are listed below: -

- Comply with the terms of the trust - trustees should fully inform themselves of the terms of the trust and strictly comply with the duties and directions set out in the trust instrument.
- Take control of the trust property - a trustee should ascertain the extent of the trust property, ensure it is held in their name and take steps to ensure its preservation. All trust assets must be kept secure and any debts owing to the trust must be pursued.
- Act impartially between the beneficiaries - trustees must act in the best interests of the beneficiaries but in doing so they must not allow one beneficiary to suffer at the expense of another one gaining.
- Take reasonable care - the standard of care and skill will vary depending on whether the trustee is unpaid or professional. Each trustee owes a statutory duty of care in that they must exercise such care and skill in all circumstances having regard to any special knowledge or expertise they have and that is expected of them. Trustees also owe a common law duty of care in which they must conduct trust affairs in the same way that a sensible man of business would conduct his own.
- Duty to keep accounts - trustees must keep clear and accurate accounts of the trusts. There is no general duty to have to accounts audited but trustees may do so at their discretion.
- Duty to provide information - trustees must produce information and documents relating to the trust when requested by the beneficiaries.
- Duty to act unanimously - trustees are usually required to act unanimously in any decisions they make.
- Duty to consult - trustees should consult beneficiaries wherever possible and carry out their wishes.
- Duty to act personally - trustees should not delegate their duties unless the trust instrument permits this, the beneficiaries authorise it or it is provided for by statute.

Investment

The duty of the trustee in investing the trust funds is to provide an income for the beneficiaries and to preserve the value of the capital. Generally powers of investment are wide as a trustee may purchase any kind of investment that he sees fit. It is recommended that trustees: -

- consider the suitability of an investment;
- diversify the investments to spread the risk, if appropriate;
- make regular reviews of the trust investments; and
- ensure the investments are not changed too frequently.

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Before investing any trust funds, trustees must seek advice from a qualified person i.e. a financial adviser.

Review

Trustees should review the trust on a regular basis to ensure all the trust assets are being dealt with in the best manner. In the case of discretionary trusts, the trustees must also consider the needs of the potential beneficiaries at regular intervals. These reviews should be documented and can be used to show the beneficiaries and the Revenue that the trust is being correctly administered.

Tax

Trustees should also ensure that the Revenue are notified of the existence of the trust (where appropriate), and that the relevant annual trust tax returns are submitted on time, with the tax being paid from the trust assets.

Distribution

Trustees are also responsible for ensuring that trust assets are distributed to the correct beneficiaries and in the correct amounts at the correct times. If beneficiaries cannot be located the funds should be paid into court. However, trustees are encouraged to seek practical solutions to administrative problems without the need for the use of the court, such as missing beneficiary indemnity insurance and advertisements in newspapers.

Tollers' trusts team are able to create trusts and advise trustees on their administration. We also provide a trust review service tailored to the individual needs of any trust. Should you require further information on this please do not hesitate to contact Kirsti Edmead or Lindsay Webster on 01536 315615.