

A Trustee's Duties and Powers

Duties

A trustee has the following duties:

1. Before accepting a Trusteeship

The potential trustee should be sure that there is no conflict of interest between him and any beneficiary.

2. On appointment as Trustee

The trustee should familiarise himself with the Trust and in particular:

- (a) read and understand the Trust documents.
- (b) find out about the beneficiaries and, if appointed to existing Trusts, see if any beneficial interests have been changed or assigned.
- (c) find out about the Trust property and ensure it is transferred, where appropriate, to the trustees.
- (d) if appointed to an existing Trust, ensure there are no outstanding breaches by the existing trustees.

3. To observe the terms of the Trust

If in any doubt about what actions to take, a trustee can apply to the Court for directions.

4. To act impartially between the beneficiaries

You must treat beneficiaries with the same entitlement equally, and the beneficiaries of all classes fairly.

5. To exercise reasonable care

A higher standard of care will be expected from a paid professional trustee than from an ordinary lay trustee. The Trustee Act 2000 creates a new statutory duty of care for trustees in carrying out their powers, although this duty can be excluded or modified by the Trust Deed itself.

6. To act personally

A trustee may delegate his duties if permitted by the Trust Deed or in accordance with the terms of the Trustee Act 1925, which permits the appointment of an attorney by deed for a period not exceeding a year.

7. To exercise the trustees' powers unanimously

In some cases the Trust Deed may permit a majority decision to prevail.

8. Remuneration

A lay trustee is not entitled to any reward, but the Trustee Act 2000 permits professional trustees to charge for their services, as may the Trust Deed itself.

9. Not to profit from the Trust

A trustee is not permitted to gain any benefit directly or indirectly from the Trust. A trustee is not generally permitted to purchase Trust property.

10. To provide information

A beneficiary is entitled to inspect any trust documents (e.g. accounts) and to be given appropriate information in relation to the administration of the Trust.

11. To ensure correct distribution of assets

12. Trust of Land

Where the trust holds land, to consult any beneficiary who is of full age and entitled to an interest in possession in the land.

The Trustee Act 2000 imposes a statutory duty of care which is to exercise such skill and care as is reasonable in all the circumstances. The standard required takes into account the trustee's experience, any special knowledge and whether he/she is acting in a business or professional capacity.

Powers

All powers of a trustee are fiduciary - i.e. they must be exercised

- in the best interests of all beneficiaries
- only for the beneficiaries and not third parties
- not for their own benefit, except where expressly authorised
- not in any way to derogate from or defeat the terms of the Trust

- in compliance with any terms imposed on the powers contained in the Trust
- in consideration of all relevant matters

The precise powers a trustee has will be defined by the Trust Deed and by statute.

The statutory powers, which may be varied by the Trust Deed, include:

1. **investment**.
2. **dealing** with land.
3. **delegation** to agents, nominees or custodians.
4. **insurance**.
5. **remuneration** for a professional trustee.

In addition the Trust Deed may contain any of the following powers:

1. **advancement** of capital.
2. **appropriation** of assets.
3. **maintenance** for a beneficiary (usually minor).
4. **appointment** of a trust fund.
5. **to lend** funds to a beneficiary interest free.

This information sheet has been prepared to highlight some key issues relating to a Trustee's duties and powers. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at May 2003 and may be affected by subsequent changes in the law.

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