



mfg Solicitors LLP guide to the Responsibilities of a Trustee



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Introduction

The aim of this guide is to assist you in understanding your responsibilities as a trustee. Your role as a trustee is usually a straightforward one, which will require a small amount of your time annually.

What is a Trust?

A trust is a way of making a gift whilst retaining some element of control over who benefits and when that benefit arises. The person making the gift is known as the settlor. The reason for this can be for tax planning, or simply to protect the longevity of the assets gifted. Instead of assets being passed to the intended beneficiaries directly they are held by people known as trustees.

What are the requirements to become a Trustee?

Provided you are aged 18 years or over and are of sound mind you can act as a trustee, even if you are a settlor or beneficiary of the trust. There are usually at least two trustees. Trustees do not need to be professionals, indeed most trustees are non-professional trustees.

What are the responsibilities of a Trustee?

Trustees are the legal owners of the gifted property, and as such are responsible for the administration of the trust and the property it contains.

The trustees are charged to look after the gifted assets for the beneficiaries. It is also up to the trustees to distribute the trust fund when appropriate, or in some cases at their discretion, such distributions will be governed by the terms of the specific trust.

A trust will continue until its purpose has been carried out i.e. the trust fund has been distributed to its intended beneficiaries. It will therefore be necessary for the trustees to make decisions concerning the investment of the trust fund. You are required to obtain financial advice when considering investing.

Does that mean I will need to seek investment advice?

Since the passing of the Trustee Act 2000 trustees are permitted to “make any kind of investment that he could make if he were absolutely entitled to the assets of the trust”. There are a number of safeguards to ensure that this general power of investment is exercised reasonably. These are that trustees:

- Must have regard to “standard investment criteria” and to reviewing investments from time to time;
- Should take “proper” advice on investment;
- In addition to ensuring regular reviews it is important not to hoard cash unnecessarily;
- Should consider “suitability” to the trust of investments and the need for diversification of those investments.

What powers does a Trustee have?

Specific powers are contained in the trust deed, and will usually include specific powers of advancement and investment amongst others.

For discretionary or accumulation and maintenance trusts you will have a discretionary power enabling you to choose which beneficiaries benefit from the trust. It is not uncommon for the settlor to have expressed a wish as to how the trustees’ discretion should be exercised, but this is not binding upon the trustees. You must therefore consider the interests of all potential beneficiaries and the circumstances at the time when making such decisions.

How are decisions made?

Decisions that are made by the trustees must be unanimous in their direction; it is not sufficient to take a majority vote. In the rare incidences of agreement being impossible it may be necessary to seek direction from the Court.

Will I be paid for my time?

Non-professional trustees cannot be reimbursed for their time (unless they experience a loss of earnings as a result). However, you may recover any out of pocket expenses that you incur whilst on trust business.

Are there any other duties?

There are a number of duties imposed by law, of which the most important is to preserve the assets of the trust fund for its beneficiaries. You must also not make any personal profit from the trust, and must not favour one of the beneficiaries at the expense of others (unless you have discretion). There are also the annual reporting requirements to the Inland Revenue (now HMRC). Finally if you no longer want to be a trustee you may retire and with the agreement of your Co-trustees appoint a successor in your stead.

Failure in any of your duties can lead to a breach of duty or trust, and you must bear in mind that trustees are jointly and severally liable, so you could be liable for the actions of your co-trustees regardless of your own actions.

mfg Solicitors LLP’s dedicated Tax & Trust Team can guide you through this, and administer the trust fund for you ensuring you meet all of your obligations as a trustee.

If you require further advice on Trusts, or your obligations as a trustee please contact Steven Holden on:

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