

Responsibilities of Trustees



GUIDANCE | TRUST | CONFIDENCE

When a person agrees to take on a position as trustee, he or she must be aware of the duties that are imposed on him by virtue of his office and also by statute law. The following is a summary of the duties imposed on trustees. This list is by no means exhaustive and is merely an overview of the main duties.

- Understand the terms of the trust. Often it is useful to understand how the trust has arisen and the circumstances that surround the trusts' establishment.
- Comply with the terms of the trust and with any laws that are attached to the administration of the trust.
- The Statutory Duty of Care is imposed by Section 1(1) of the Trustee Act (NI) 2001. It provides that a trustee must act with such care and skill as is reasonable bearing in mind any special knowledge or experience he has. This is particularly relevant for professional trustees who may reasonably be expected to have special knowledge or experience.
- A trustee must not breach any duty he has towards the trust. He must not put at risk trust property and in carrying out his trust duties he must put his own interests aside.
- The Statutory Duty of Care applies to trustees who have the power to acquire land, and to hold land under that power.
- In relation to trust property a trustee has all the responsibilities that an outright owner would have i.e. a duty to insure the property, to ensure that the title to the property is in order as well as any other documents which may affect the property in any way. Trustees also have an ongoing duty to investigate the condition of the trust property.
- A trustee must recover or make an attempt to recover trust property or any debts or funds due to the trust. If necessary legal proceedings should be instigated to recover any items or funds. A trustee also has a duty to defend any action brought against him in his capacity as trustee.
- A trustee's responsibilities must not be delegated other than as specifically stated in the trust instrument or by law. Basically a trustee cannot pass on his responsibilities regarding the distribution of the trust assets, whether fees are to be paid out of capital or income and the appointment of new trustees. When exercising powers of delegation regard should be had to the Statutory Duty of Care, Schedule 1, paragraph 3.
- A trustee is personally responsible for the decisions that are made regarding the administration of the trust and its property, (unless the function has been properly delegated). A trustee cannot delegate to a beneficiary.
- The trustees of a public or charitable trust can act by majority in any decision, whereas the trustees of a private trust, such as those created by will, have to make unanimous decisions.
- The trustees must not benefit one beneficiary at the expense of another. In every decision that the trustees makes he must be even handed, (unless the trust instrument provides otherwise) and consider the interests of all the beneficiaries and not a particular beneficiary or class of beneficiaries. Where the trust is a life interest trust, the trustee when exercising his powers in favour of the life tenant must exercise his powers in a way in which he will not prejudice the rights of the residuary beneficiary.

- If a trustee is uncertain as to how the capital and income of the trust is to be distributed or if a beneficiary is missing then it is possible to apply to the court for guidance in the form of a direction. Guidance should be sought within statute law at first instance and applications to the court should only be as a last resort.
- Trust property must be accurately accounted for and a trustee should always be prepared to make available the accounts.
- If funds within the trust are held for different purposes then the trustees shall hold such funds in separate bank accounts or alternatively the records should clearly indicate how each fund is held.
- Trustees are under a duty to ensure that the tax position is clarified and duly conformed with.
- A trustee has a duty to invest sums and pay the income into the trust, unless the trust instrument states to the contrary. The trustee must abide by the Statutory Duty of Care as set out in Schedule 1, paragraph 1. In the event that monies are being held pending a transaction then such sums should be held in an appropriate deposit account and the income applied to the trust. Unless the trust instrument states otherwise.
- A trustee must seek professional advice on matters in which he is not competent.
- Where there is delegation to an agent managing the assets of the trust, i.e. to a financial advisor, the delegation must be in writing. The trustee must also supply the agent with a policy statement, so that the agent has guidance. The agent must agree to comply with the terms of the policy statement.
- Investment of the trust fund must comply with Section 3 of the Trustee Act (NI) 2001 (different legislation, with the same effect, applies in other parts of the UK). This section provides that the trustee may "make any kind of investment that he could make if he were absolutely entitled to the assets of the trust". This power is subject to numerous safeguards and exceptions, which are set out within the Act.
- Charitable Trusts have additional duties to ensure that the charity is solvent and effective.

As noted above, these duties are not exhaustive. The lesson we seek to convey in this briefing note is that being a trustee is a serious responsibility, carrying with it obligations and accountability, and is not to be undertaken lightly.

Please feel free to speak to us about any concerns or questions you may have arising out of this information sheet.

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