

## What is a Trustee?

A trustee is someone who holds the legal title to property and looks after that property, on behalf of someone else (a beneficiary). Property can include: land, cash, shares, investments, paintings and houses. The beneficiary may be entitled to an income or the actual capital, depending on what type of trust was created.

## Who can be a Trustee?

In principle anyone who has the capacity to own/hold property can be a trustee. However, no person under the age of 18 years can hold legal estate in land and therefore cannot be a trustee of land.

Whilst it is possible for a bankrupt to be a trustee, the very fact that they are a bankrupt may create its own problems.

## Appointing a Trustee

Trustees are usually appointed by the person who creates the trust although new trustees can be appointed by:

- current trustees (where the trust permits)
- beneficiaries (where certain circumstances are met)
- statutory powers given to trustees under the Trustee Act 1925
- the court

## Number of Trustees

Whilst there is no maximum or minimum number of trustees for personal property, where the trust includes land there must be at least 2 and no more than 4 (except in a charity or pension fund).

Where the beneficiary is below the age of 18 years there must be at least 2 trustees.

## What is expected of trustees?

The standard of conduct expected of trustees is found in the Trustee Act 2000. It states that the

trustee, 'must exercise such skill and care as is reasonable in all the circumstances'. This is known as the trustee's 'duty of care'. The practical effect of this is that the trustee, in going about their role, must show that they have done all they could to fulfil this duty. For example if they have to invest money then they must take appropriate advice about how and where to invest it, usually from a professional independent financial adviser.

Where the trustee is a professional and their trustee role requires them to use their specialist professional knowledge then the standard of care they owe is expected to be higher than that of a lay trustee.



## Duties of a Trustee

Upon being appointed as a Trustee the Trustee must:

- familiarise himself with the terms of the trust
- check the state of the investments
- check that all property is vested in the names of the trustees

A trustee has a duty to make decisions about income and capital as it becomes due in accordance with statute and the terms of the trust. If a trustee does not distribute in accordance with the terms of the Trust, they may become personally liable.

It is the Trustees duty to safeguard and protect the trust and as part of this they have a duty to invest. The general powers of investment that a trustee is given by statute allow the trustee to make any kind of investment that he could make if he himself owned the assets of the trust. However, they must follow certain criteria when they invest. For example the trustee must consider the suitability of the type of investment and the need for appropriate diversification of investments. Trustees must review the investments from time to time to ensure that they are still suitable and the trustee should seek and consider 'proper advice' unless they believe it is unnecessary.

### The Trustees duties to the beneficiaries – 'Fiduciary Duties'

Generally a trustee is a 'volunteer' and they are not entitled to payment unless the trust deed specifically authorises it. An exception to this is where a trustee is a professional for example an accountant or solicitor. However, all trustees may reclaim out of pocket expenses which they incur whilst fulfilling their duties.

Trustees must maintain equality between beneficiaries. For example where a beneficiary has an entitlement to income for life, thought must also be given to those who will later be entitled to the capital.

Trustees must keep accurate and up-to-date accounts.

Trustees must always be on their guard not to put their own interests ahead of those of the trust.

### The Powers of Trustees

The 'powers' of trustees must be distinguished from the 'duties' of trustees. 'Duties' are obligatory and failure to comply with them can lead to an action against the trustee for breach of trust. However, the 'powers' of trustees are discretionary. The main 'powers' given to trustees by the Trustee Act 2000 are those of delegation and maintenance & advancement.

### Delegation

Whilst a trustee may delegate some duties to an agent/professional, they **must not** delegate; how trust assets should be distributed, whether payments should be from income or capital, appointment of new trustees, any other powers unless they are

specifically permitted to by statute. However, they are permitted to delegate functions to another person, for a maximum of 12 months, using a Power of Attorney.

Trustees often employ a professional eg: a solicitor to help ensure that they are fulfilling their duties to the Trust. At PSL we work with trustees to organise the trustee meeting, attend it, write up the minutes and submit the Trust accounts. This is a cost effective way for the trustees to keep up to date with the latest on Trust Law.

### Maintenance & Advancement

A trustee may use the trust to provide maintenance ie: allow beneficiary money from income before they become fully entitled, for example, providing income to pay school fees for him. Advancement is when a trustee allows a beneficiary to receive part of his capital before he is fully entitled, eg: if the beneficiary cannot access the trust fund until he reaches the age of 25 a trustee may advance capital to the beneficiary to enable them to buy a car even though they may only be 21 years old.

**The role of a trustee should not be taken lightly as trustees can be held personally liable in some situations. If you would like to discuss the role of Trustee in more detail or need advice on acting in your role as a Trustee call us.**

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