

Coffin Mew Solicitors – Wills, Trusts & Probate

GUIDANCE FOR TRUSTEES

Trusts & Trustees

What is a trust?

“A trust” is a relationship that is recognised and enforceable in the courts. A trust may arise by a declaration of trust, a will or settlement, the assets being vested in the trustees to hold upon the terms of the trust for the benefit of either specified individuals or a range or class of beneficiaries.

What must the trustees do?

The trustees must look after the trust assets (the “trust fund”) for the benefit of other persons (the beneficiaries). In some cases there may be just one trustee and one beneficiary but the sole trustee cannot be the sole beneficiary or else there is not a trust relationship.

How must the trustees act?

When the trustees are appointed they agree to act in the interests of the beneficiaries and not themselves. This is why it is called a “trust”. They are entrusted to look after the trust fund for the beneficiaries.

The beneficiaries can benefit in the way set out in the trust deed.

Who should not be a trustee?

- A person under 18. It may also be too much responsibility for young people over 18.
- Undischarged bankrupts and those with monetary arrangements with creditors.
- People with current money troubles or with a history of money troubles.
- People in prison or who have or may soon be convicted of offences involving dishonesty.
- People with a conflict of interest with the compensated person or others in the trust.
- People with serious health problems who may be unable to fulfil their duties at any time.
- People who live outside the UK or may do so.
- People who are in any way concerned that they might be unable or unwilling to fulfil their duties as trustee

What are the powers of the trustees?

The trustees have certain powers over handling of the trust fund. These are set out in the trust deed. Trustees do not have any power to go beyond the terms of the trust deed unless they are included within the general law. Most things a person would want to do with their own money can be done by the trustees for the benefit of the beneficiaries. For example, they can, upon taking appropriate advice, open and operate a bank account, invest money, buy and insure property and purchase help and assistance for the beneficiaries.

Trustees may sometimes need to take legal advice. That is funded by the trust fund and not from their own pockets unless the trustees do something wrong. That is called committing a 'breach of trust'. Trustees are liable for losses due to 'breach of trust' out of their own pockets, so taking legal advice is important. Trustees can also obtain help from other professionals, such as accountants for completing tax returns and independent financial advisers or stockbrokers for investment of the trust fund. Again, that is at the expense of the trust so far as it is necessary to the smooth running of the trust.

What are the duties of the trustees?

A trustee must:-

- Disclose any circumstances where there might have been a conflict of interest with the beneficiary. For example if the beneficiary owes the trustee money this should be disclosed.
- Not to act in conflict with the interests of the beneficiaries or profit from their role as a trustee.
- Ensure they know what the terms of the trust are and that they are carried out.
- Ensure that they do not act beyond the terms of the trust and its power.
- Ensure that good trust records and accounts are kept and pay tax due on time.
- Take independent financial advice. This does not preclude the use of common sense or a trustee's own professional investment expertise. The trustees must also ensure that the advice taken is in accordance with the Trustee Act 2000. The ultimate decision over what to invest in is the trustees' decision. It cannot be delegated.
- Act impartially and fairly between any multiple beneficiaries and those who are beneficiaries now and those who will be in the future. This is a general rule but in the case of a personal injury trust the compensated beneficiary would expect to be the main beneficiary for life. That is allowed for under the powers of the trustees.
- Take reasonable care. Professional trustees must take more care than others.
- Act jointly. Trustees should not normally delegate functions to each other. Trustees are jointly liable for mistakes and should therefore act together.
- Not charge. Only professional trustees can claim more than out of pocket expenses.
- Ensure that beneficiaries are kept fully informed. This avoids dispute.

What about investment of money whilst it is in the trust?

The trustees will have power to invest the money as they see fit but the trustees must take independent financial advice.