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# Duties of Trustees

## Introduction

Trustees are the persons in whom the property of a trust is entrusted for them to manage in accordance with the terms of the trust. These notes list some trustee duties.

The duties can be summarised:

- To comply with the terms of the documents creating the trust;
- To apply a prudent standard of care;
- To act in good faith;
- To respect the fiduciary relationship with the trust fund and beneficiaries; and
- To comply with relevant statutes.

Our deeds of trust reduce the impact of the obligations on trustees so that trustees are only liable for their own dishonesty and deliberate breaches of trust.

## General duties

Duties of trustees include:

- Trustees must comply with the duties outlined in the trust document;
- Trustees must act with care, diligence and skill which can reasonably be expected of persons who manage the affairs of another, as set out in more detail in "Standard of care" below;
- Trustees must fulfil their duties impartially and in good faith, as set out in more detail in "The duty to exercise powers in good faith" below;
- Trustees must take control of trust assets and keep them clearly separate from their personal property;
- Trustees must preserve trust property and keep it free from charges;
- Trustees must manage trust assets which are capable of producing an income so that a reasonable return is obtained;
- Trustees are in a fiduciary relationship with their trust's beneficiaries. The duties implied by this fiduciary relationship are set out in "Fiduciary duties" below;
- Trustees must maintain proper accounts of trust funds and trust business; and
- Trustees must not exceed the powers contained in the will or trust deed and granted by statute.

Trustees may not delegate their duties or powers even to co-trustees, except where permitted by the trust document or by statute or by certain limited exceptions. For trustee decisions to be valid, all trustees must have considered the issue and if a trustee has not been consulted or just "rubber-stamps" a resolution, the "decision" may be invalid and could be overturned by the Courts.

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## Standard of care

Trustees must comply with a high standard of care, especially if they are professional trustees, because they are dealing with trust funds. In this regard:

- Trustees may be sued by beneficiaries if they act negligently, even if they act in good faith;
- Trustees may be sued if they breach the terms of the trust;
- Trustees must avoid situations where their private interests conflict with their duties as trustees, as set out in more detail in "Fiduciary duties" below; and
- Trustees must not profit, directly or indirectly, from the administration of the trust, apart from any remuneration they may be entitled to.

## The duty to exercise powers in good faith

The duty of good faith means that:

- Trustees must exercise their powers in an independent and objective manner—trustees have a duty to do what they consider best serves the trust's interests;
- Trustees must exercise their powers for the purpose for which they were given;
- Trustees must act within the limits of their authority.

## Fiduciary duties

Trustees stand in a fiduciary relationship to both the trust fund and the beneficiaries. The fiduciary relationship means that:

- Trustees must avoid any material conflict between their own interests and those of the trust;
- Trustees must act honestly and in good faith; and
- Trustees may not deal with trust property for their own benefit. For example, they may not lend trust funds to themselves and sales of trust property to trustees should be avoided.

## Statutory duties

Trustees must comply with the provisions of the Trustee Act 1956 (or the Trusts Act 2019 after 30 January 2021) and all other relevant legislation including the Administration Act 1969 and the Income Tax Act 1994.

## Breach of trust

Trustees who breach their duties may be liable to their trust and beneficiaries for:

- Any loss suffered by the trust as a result; and
- Any economic benefit derived by the trustee as a result.

## New Trusts Act 2019

New legislation has been passed to deal with trusts, which comes into effect on 30 January 2021. Some of the changes include:

- Increased obligations about specific information that must be provided to beneficiaries
- Trusts will be able to last 125 years (up from 80 years)

## Conclusion

In practice, being a trustee is not as difficult as it might appear. We can always advise on proposals that appear to be tricky. The trustees must be able to show that the trust is being well managed. This means that all trustees should be involved in every decision regarding the trust's assets; authorise all payments and be registered as owners of trust assets. All important decisions should be recorded in minutes signed by all trustees.

These notes are of a general nature only. Please contact us for specific advice.