



S O L I C I T O R

With you every step of the way

WHAT IS A TRUSTEE?

A trustee is an important role. By agreeing to act as a trustee you have an obligation to administer the trust in accordance with the trust document.

The trust was established by the settlor, who transferred the trust asset to the trustees to look after in accordance with the terms of the trust.

The trust document sets out the terms of the trust and the powers and duties of the trustees. Statutory provisions also apply to the operation of the trust. The letter of wishes (if there is one) sets out the wishes of the settlor, but it is not legally binding.

The beneficiaries are the people who will benefit from the trust funds.

TRUSTEE DUTIES

The trustees are subject to various legal duties. The main duties are set out below. In some cases they may be varied by the terms of the trust document.

OBSERVE THE TERMS OF THE TRUST

It is the trustees' responsibility to familiarise themselves with the interests of the beneficiaries under the trust and all the terms of the trust.

ACT IN THE BEST INTERESTS OF THE BENEFICIARIES

The trustees have the duty to act in the best interests of the beneficiaries. The trustees must act impartially between the beneficiaries — eg treat beneficiaries of the same class equally and beneficiaries of different classes fairly. This may require specialist advice.

DUTY TO EXERCISE REASONABLE CARE

The common law duty of care is the duty to take all those precautions which an ordinary prudent man of business would take in managing similar affairs of his own if he were minded to act for the benefit of other people for whom he felt morally bound to provide.

The statutory duty of care is to take such care and skill as is reasonable in the circumstances, having regard to certain factors.

DUTY NOT TO PROFIT FROM THE TRUST

A trustee may not profit from their trust. A trustee is not allowed to obtain any profit or gain from being a trustee.

DUTY TO ACT PERSONALLY

A trustee must act personally ie themselves (but delegation is permitted in some circumstances).

DUTY TO ACT UNANIMOUSLY

The trustees have a duty to act together (unanimously), unless the trust deed says otherwise.

DUTY OF CONFIDENTIALITY

Information obtained by a trustee in confidence during the trusteeship must be kept confidential and may only be exploited by the trustee for the benefit of the beneficiaries.

DUTY TO DISCLOSE INFORMATION

The beneficiaries are entitled to receive sufficient information about the trust assets

DUTY TO KEEP RECORDS AND ACCOUNTS

Trustees should generally provide beneficiaries with the trust accounts upon request and they should keep records of all meetings and decisions.

TAX AND REGULATORY DUTIES

It is the trustees' responsibility to ensure that the trust is tax compliant eg by filing tax returns and paying tax. It is also the trustees' duty to comply with all regulatory requirements, such as the disclosure of beneficial ownership information to HMRC.

COMMON QUESTIONS

HOW SHOULD REQUESTS FROM BENEFICIARIES FOR DISTRIBUTIONS BE DEALT WITH?

This depends on the type of trust and who makes the request.

If the trust is a discretionary trust then the trustees have absolute discretion about distributions. The trustees must consider the beneficiaries request and act fairly, but this does not mean agreeing to the distribution and it does not mean treating the beneficiaries equally.

If the trust is a fixed interest trust or a beneficiary has a future entitlement, the trustees will need to consider whether the distribution is in the respective beneficiary's best interests.

WHAT IS A BREACH OF TRUST?

A breach of trust is the breach of duty imposed on a trustee by the trust document or by the law. It is an act or omission that is contrary to a trustee's duties.

A trustee can be personally liable for a breach of trust ie a trustee could be sued personally. This is why it is important to obtain professional advice when it is needed.

PRACTICAL POINTS

Depending on the nature of the trust and what decisions the trustees need to make, they may have at least yearly or bi-yearly trustee meetings to:

- review the trust investment performance
- review the trust accounts, tax return, budget and distributions to beneficiaries
- make decisions about distributions to beneficiaries
- any other trust business, such as appointment investment managers or agents

Generally, an agenda will be circulated beforehand by the professional advisers or lead trustee. All decisions made at the trustee meetings should be documented and minutes kept.

Between the trustee meetings, the trust administration in relation to the above matters will be ongoing.

If you would like to talk to someone about your role as a trustee please contact info@kjcoxsolitors.co.uk or see our website www.kjcoxsolitor.com