



## Guide to Being a Trustee

### General

Trustees must not be passive. They must take an active part in running the Trust. They must ensure that they understand the nature of the Trust, what the Trust property consists of and ensure that they take possession of it and ascertain who is to benefit from the Trust.

### Trust Property

The Trustees must acquaint themselves with the nature and particular circumstances of the Trust property and take such steps as are necessary to protect it. If any Trust property has been lost the Trustees should consider what steps to take and if necessary apply to the Court for directions. In relation to money held by a Bank or Solicitor, the Trustees should organise its proper investment or disposal as appropriate.

### Trust Papers

The Trustees must ensure that all trust records, books and other papers are provided to them. These may be voluminous and should include the minutes of the previous meetings of the Trustees and the original Trust document which may be a Deed of Settlement or a Will. The documents need to be kept safely.



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## Investment Powers

The Powers of the Trustees in relation to investment will be contained in the Trust Deed and if not are governed by statute. In general a Trustee is required to use the same degree of diligence and care in acting as a Trustee as a man of ordinary prudence would use in the management of his own affairs, although the duty is not to take such care as a prudent man would take if he had only himself to consider – the duty is rather to take such care as an ordinary prudent man would take if he were minded to make an investment for the benefit of people for whom he felt morally bound to provide.

Professional Trustees owe a higher standard of skill and care than lay Trustees. Trustees must act honestly and take all those precautions which an ordinary prudent man of business would take in managing similar affairs of his own. In real terms this means that Trustees should not invest on a speculative basis and should avoid hazardous investments. Nevertheless Trustees would be wise to balance the Trust portfolio as a whole and in reality lay Trustees would be expected to take professional advice from independent financial advisors in relation to the investment of substantial amounts.

In choosing investments, Trustees must act impartially, or fairly, as between beneficiaries with different interests, particularly between

those interested in current income and those with longer term interests.

Trustees must from time to time review the investments of the Trust and consider whether having regard to standard investment criteria at the time they should be varied – again professional advice should probably be taken by lay Trustees to ensure they act properly in this respect. How often the review takes place depends upon the size of the Trust fund and the nature of the investments – in some cases a six month review would be appropriate, in other cases an annual review and perhaps sometimes review at longer periods. Lay Trustees would again be wise to take professional advice as to how frequently reviews would be necessary to manage the Trust funds efficiently.



## Delegation

Trustees may delegate their powers, including the power to invest, to agents. However the Trustees are under a duty of care to the beneficiaries in relation to their

choice of agent and in agreeing the terms on which the agent is to act. Trustees should therefore ensure that any person appointed is properly qualified to carry out the work delegated to them. The Trustees must use reasonable skill in appointing agents and thereafter in supervising them. Provided that the Trustees use such reasonable skill and appoint the agent in good faith, they will not thereafter be liable for any act or default of the agent. This is an important protection for Trustees.

## Management of the Trust Property

Trustees must preserve and manage Trust property for the benefit of the beneficiaries. In addition to the necessity to review and transpose investments, property in its existing state of investment requires to be preserved and managed and if needs be insured. Trust land and buildings must be kept in repair; rents must be collected in the case of tenanted land; where the Trust property includes a controlling shareholding in a company, the Trustees are under a duty to keep themselves informed about the company's affairs and about the directors' plans for the future; where all or a substantial part of the Trust property is represented by a controlling holding in a limited company, the Trustees are bound to see that the company's assets are administered cautiously.

## Trust Tax Affairs

The Trustees are under a duty to prepare Trust accounts. These are usually prepared on an annual basis. Clear and distinct accounts of the Trust Property which has been administered must be kept – lay Trustees may wish professional help from Accountants in this respect and the cost of this would be a proper Trust expense. Beneficiaries are entitled to inspect the Trust accounts and if Trustees fail to render accounts beneficiaries are entitled to have accounts taken by the Court.

The Trustees must notify the Inland Revenue of the creation of the Trust. Thereafter the Trust is taxed in a similar way to an individual and annual tax returns must be completed and submitted. Lay Trustees may again wish to seek the professional help of Accountants to ensure that the tax affairs of the Trust are dealt with properly.

**This guide contains information on current legal issues applicable at the time of printing. Note there may have been changes subsequently which have not been incorporated in to the material. This guide is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice. For further information on how we can help you please contact:**

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