

CKLG

ACCOUNTANTS & CHARTERED TAX ADVISERS

Tips and Hints for Non-Professional Trustees

Taking on the role of Trustee can be daunting and there are various risks and responsibilities that must be considered prior to agreement. Trustees are responsible for the day-to-day management of the Trust and must be aware of the duties that are imposed upon them. A Trustee will become personally liable if duties are ignored or not complied with.

Before you accept the role, you should:

- ⇒ Be provided with the Trust Deed/ Will which will outline the powers and limitations, who is to benefit and what their needs may be (along with the STEP Standard Provisions if applicable)
- ⇒ Ensure you are familiar with the duties imposed under the Trustee Act 2000.
- ⇒ Ensure there is no conflict of interest between you and the beneficiaries
- ⇒ Understand that you may retire as Trustee (this must be by Deed).

This following lists summarise the duties imposed on Trustees (once the role has been accepted) – this is merely an overview to provide a greater understanding of the role, not an exhaustive list. Each Trust will be different and will have its own quirks, although general Trust law will apply to all Trusts.

COMPLIANCE

- ⇒ Comply with Trust law
- ⇒ Understand & comply with Trust Deed
- ⇒ Keep clear & accurate accounts
- ⇒ Ensure Tax Returns are completed by due dates & statements of income sent to beneficiaries
- ⇒ Ensure the Trust is registered on HMRCs Trust Registration Service
- ⇒ Take control of Trust property (legal ownership) and accept responsibilities

CONSULTATION

- ⇒ Be aware of the wishes of the Settlor
 - ⇒ The Letter of Wishes is not legally binding but will guide Trustees in understanding the reasons and purpose behind the Trust
- ⇒ Consult with beneficiaries to make sure that you are aware of their wishes
 - ⇒ Beneficiary wishes do not have to be followed if the Trustees believe it is not in the best interest of the Trust as a whole
- ⇒ Provide information to the beneficiaries on request

STEWARDSHIP

- ⇒ Act impartially and in the best interest of the beneficiaries
 - ⇒ Residuary beneficiaries must not be prejudiced by decisions made for the Life Tenant
 - ⇒ Ensure that vulnerable beneficiaries are not taken advantage of
- ⇒ Take reasonable care
 - ⇒ Common law duty of care to act prudently and diligently and not put the Trust assets at risk
 - ⇒ Statutory duty of care to exercise such care and skill as would be reasonable to expect from you as a non-professional Trustee
- ⇒ Act personally and do not delegate your duties, unless specifically allowed in the Trust Deed or under Trust law
 - ⇒ Duties can never be delegated to a beneficiary
 - ⇒ Administrative duties can often be delegated (e.g. Tax Return preparation and investment management).
 - ⇒ As a Trustee you must make sure that investment policy is agreed upon.
- ⇒ Seek professional advice where required (e.g. legal)
- ⇒ Hold regular meetings, recording all decisions in meeting minutes