

## What are the duties and responsibilities of a trustee?



Trustees need to comply with the requirements of the Trustees Act 2000 once the Trust has been created. If they do not comply with their duties they will be committing a breach of trust and may be liable for losses out of their own pocket. This guide sets out the key duties and responsibilities that are required.

The duties of a trustee are:



The trustees must meet to review the Trust at least once a year and prepare minutes for these meetings.



The trustees must ensure that good records and accounts are kept and that any tax returns are filed and tax is paid on time.



When making decisions regarding the assets within the Trust, these must be made unanimously by all trustees, they must comply with the terms of the Trust and be in the best interest of the beneficiaries.



The trustees will need to record any payments that are made out of the Trust to beneficiaries and complete the required documentation.



If the Trust contains cash or assets advice will need to be taken from an independent financial adviser on how these can be invested.



Any investments will need to be monitored on a regular basis.



All trustees must take an active part in managing the Trust and they must act diligently e.g. as 'fiduciaries'



The settlor should be completely satisfied that the trustees are reliable, trustworthy and capable of carrying out their duties fully.

The responsibilities of a trustee are:

### **Beneficiaries can take action if the Trust is not being run properly**

If the trustees are failing in their responsibilities and duties, the beneficiaries can call the trustees to account. If necessary, the beneficiaries can go to court to seek redress.

### **Complying with the terms of the Trust**

The trustees have certain powers over the handling of a trusts assets. These are set out in the trust deed. The trustees do not have the power to go beyond the terms of the trust deed unless they are included within the general law.

If it is a Discretionary Trust, any payments made out of the Trust to the beneficiaries must be recorded by the trustees. This will need to be done in writing and evidenced by a Deed of Appointment of Funds to avoid the HMRC arguing that the Trust is not a Discretionary Trust.

### **Registering the Trust with the HMRC**

It is necessary to notify the HMRC of the existence of the Trust and where necessary to register the Trust for income tax and capital gains purposes. To do this there are set forms which should be completed and signed by the trustees. Once these are logged with the HMRC, a Unique Tax Reference (UTR) is given to the Trust and trust tax returns are issued yearly to the first named trustee, if required.



### Investment advice

According to the Trustee Act 2000, the trustees will need to take advice from an independent financial adviser on how assets within the Trust can be best invested. These assets will need to be reviewed on a regular basis (at least once a year).

A report should also show the suitability against other investments.

### Making tax returns

Any tax returns issued to a trustee must be submitted to the HMRC by the due date. The deadline for this is usually 31 October\* for trustees that file a paper tax return and 31 January\* for trustees that file the return online.

The tax return has to be correct to the best of the trustees' knowledge and belief and it is recommended that the trustees consider carefully before signing each return. There are penalties for submitting an incorrect tax return.

### HMRC practice on receipt of the tax return

On receipt the tax return will be checked by the HMRC to make sure it is a valid return. For instance, that it has been properly signed.

Over the 12 months following receipt of the return, it will be reviewed to decide whether the HMRC wishes to make enquiries. Such enquiries may vary from checking on a single item to a full-scale investigation into the Trust's tax affairs.

### For further information, please contact our dedicated Trusts team:



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Our team  
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\*Dates within this guide are correct as at November 2015.

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