

Trustees

Who is a Trustee?

A trustee is someone who is given legal responsibility to hold property in the best interest of or for the benefit of someone else. As the name implies the trustee acts under a “trust” to do what is best and to act in the interests of others (the beneficiaries) and not themselves.

Where a Trust is inserted within a Will in favour of a spouse (as a beneficiary) upon first death, it is almost always advisable that a MINIMUM of two other trustees be appointed to act jointly with the spouse. In this situation it's advisable to appoint a minimum of three trustees to act in order to reduce problems arising from death, resignation, retirement or removal. This helps prevent any conflict of interest arising out of the fact that the spouse is appointed and acting as sole trustee as well as being a primary beneficiary.

Where clients wish to incorporate a NRBD within their Wills

The primary beneficiary in each will is the surviving spouse or partner. The secondary beneficiaries by default are the children. Therefore, should clients' wish to appoint the spouse as trustee (to act solely), as they are primary beneficiaries they would be permitted to make decisions regarding the Trust alone: for instance, should the spouse want to borrow money from the Trust (under the loan scheme), she/he would simply take the money without the need to consult anyone else, (as she/he is a trustee acting alone and also primary beneficiary). Also, if they appoint the spouse to act solely and the spouse is no longer alive (i.e. Because they are the second to die), then there is no trustee to act in reserve and to run the trust. Which is why it is always advisable that the clients do not appoint each other to act SOLELY as a trustee where they wish a will. Life interest to be incorporated within their Wills and also they wish for the spouse to be the primary beneficiary.

Powers of a trustee

The Powers of trustees are set out in the Trustee Act 2000. The main purpose of the Act is to restrict the powers. But in many areas, the statutory powers can be extended (the restrictions can be reduced). Great care should be taken as to what powers are required in each set of circumstances. One historic problem for trustees has been the incomprehensible nature of trust deeds, so that most people would have great difficulty in understanding what they may or may not do as a trustee.

Trustees are appointed both privately and by law. For example, trustees will be appointed to look after any money belonging to a person unable to look after it for himself - through old age, or injury or infancy. However, the trustees most familiar to us are probably those responsible for a Will Trust. The executors in a deceased estate are trustees with a special task, namely the winding up of the estate.

When a testator (that is, the person who wrote the Will), creates a Trust by his Will, it is usual for the executors to continue in office as trustees of the trust. It may not be possible even to identify the precise day that they took off their hats as executors and put on their trustees hats instead.

Appointing different trustees for specific tasks

Sometimes a testator appoints a different set of people to be trustees. For example,. In considering a discretionary trust for grandchildren, it may be sensible to find young trustees even though the testator may want specific other people to act as executors. Another example of different trustees may arise if guardians are appointed for children. It may be sensible to appoint the guardians as trustees only of a children's trust.

The Trustee Act 2000 provides the framework within which trustees must act.