

# Why should I use a Professional Trustee?



## Not choosing a Professional Trustee could mean your Beneficiaries lose out -

- ! Where Trustees are also named as Beneficiaries often leads to disputes.
- ! A Professional Trustee is completely unbiased and will uphold the Settlor's wishes.
- ! A Professional Trustee will ensure the Beneficiaries' inheritance is protected.
- ! A Professional Trustee will advise on any Tax saving strategies available.

## In Detail

### Why should I use a Professional Trustee?

The role of a Trustee can be extremely daunting for an untrained person and often decisions will be made which may not be completely in the interest of the Beneficiary(s). This may be simply because the Trustees do not have a clear understanding of the impact their decisions may have on the Beneficiary's inheritance.

A Professional Trustee gives consideration to the Tax status, financial status and marital situation, of the intended Beneficiary (ie if the Beneficiary were undergoing financial difficulties or entering into Divorce Proceedings). This ensures that the assets would not be lost to creditors or future ex spouses.

Our advice can be crucial in preserving assets and ensuring as much as possible is received by the intended Beneficiary(s) and is not lost to tax, divorce or in settlements to creditors.

Many people when creating Trusts appoint their children or other family members as Trustees. The Trustees are often also the Beneficiaries to the deceased's estate and this fact may pose some real problems after the death of the Settlor (the owner of the Trust).

Once the deceased's assets have entered the Trust, a Trustees meeting must be held and any decisions regarding the distribution of these assets have to have the agreement of ALL of the Trustees. As we are all aware, this can often prove to be an issue within some families.

Appointing a Professional Trustee, will ensure that a totally unbiased approach is taken when dealing with the deceased's assets and that the Settlor's wishes are completely upheld.

There can generally be any number of Trustees but for our own and most Trusts, the number ranges from 2 – 4. It is possible for an institution to act as a Trustee, such as Tax & Trust Corporation. It is possible for the same person to be both a Trustee and a Beneficiary.

### Benefits of having a Professional Trustee

- As authors and creators of the Family Trust they are best placed to make any future amendments that could be necessary to ensure the maximum efficiency of the Trust.
- Best use of tax legislation, optimising trust efficiency both before and after first and second death.
- Efficient advisory service in the assignment/retirement of Trustees.
- All of our advisors have extensive experience and advanced qualifications in the areas of retirement, taxation and trust planning.

**Remember, whilst you have the reassurance of professional expertise behind you, there is no annual fee levied.**

### The Trustee's Duties can be summarised as follows:

- All Trustees should familiarise themselves with the terms of the Trust so that they can administer it in accordance with the Trust Deed.
- All dealings with the Trust fund by the Trustees must be for the benefit of the Beneficiaries.
- The Trustees must use their utmost diligence to avoid any loss. If they are negligent and a loss arises they may be responsible for that loss to the Beneficiaries.
- All Trustees must act unanimously. Under English Law, Trustee's decisions cannot be made by a majority of Trustees unless the trust specifically allows this.

### Trustees powers and duties

There are several statutory powers and these can be quite comprehensive. The following highlights just a few of the main powers:

- Trustee powers of investment - Section 3 of the Trustee Act 2000 permits Trustees to "make any kind of investment that he/she could make if he/she were absolutely entitled to the asset of the Trust". This provision is subject to any restriction imposed by the Trust itself.
- Act in the best interest of all Beneficiaries - The Trustees must judge the suitability of investments having regard to the best interests of all Beneficiaries, past and present.
- Exercise reasonable care and skill - A Trustee must pay regard to any specialist knowledge or experience that he/she holds.
- Review investments from time to time - Trustees must undertake periodic reviews of the investments held by the Trust.
- Take proper advice - When considering any investments, or when carrying out a review of the investments of the Trust, the Trustees must obtain and consider proper advice.
- Power to apply income for the benefit of child Beneficiaries - The Trustees have the discretion to apply the whole or part of the income of a Trust for the maintenance, education or benefit of a child Beneficiary.
- Power to delegate - The Trustee Act 2000 empowered Trustees to delegate to agents any of their functions except certain defined responsibilities.

### Trustees Common Law responsibilities

Below are highlighted just some of the many Common Law responsibilities a Trustee has:

- A duty to take account of the Settlor's wishes - A Settlor may sometimes write a 'side letter' to the Trustees containing an 'expression of wishes'. This is not binding upon the Trustees, but would stand alongside the trust document and provide guidance to the Trustees as to the way in which the Settlor would like them to carry out their duties.
- Duty to ensure fairness between Beneficiaries - The Trustees must hold the balance fairly between different categories of Beneficiary e.g. if a Trust provides that one class of Beneficiary is to receive the income from the Trust fund during their lifetime and a second class is to receive capital on the death of the income recipient, it would be unfair to the income recipient if the Trustees were to invest in assets which produce little or no income, but offered the prospect of greater than usual capital growth.
- Duty to take account of tax considerations - The Trustees must take into account considerations such as tax and administrative costs when choosing investments.

The above duties are just a few of the main considerations. With the use of a Professional Trustee, it is within their day to day routine to ensure that all of the Trustee's duties are followed.