



**HATTEN WYATT**

*Solicitors & Advocates*

*Established 1844*



## *Trustee Obligations*

The Trustee's duties and responsibilities are governed primarily by the trust instrument (the document creating the trust) and the law.

Before accepting a trust the prospective trustee must disclose any circumstances which might tempt him to exercise discretionary powers unfairly or any actual or potential conflict of interest which would or might arise if he accepted the trusteeship. This is because in all cases all trustees owe an overriding "fiduciary duty" to the beneficiaries. This is a serious legal responsibility and implies a fundamental "duty of care" to the beneficiaries which means that trustees must ensure that there is no conflict of interest between their duty to the trust and any other duties they may have and above all they must place the interests of the beneficiaries above their own personal interests.

Having accepted the trust it is the duty of the trustee to acquaint himself as soon as possible with the nature and circumstances of the trust property, the terms of the trust, and the contents of the documents handed over to him relating to the trust.

Where necessary he should secure control of the trust property by arranging the transfer of the same to himself as

trustee and (subject to the provisions of the trust) get in trust money invested on insufficient or hazardous security. They must then preserve and manage trust assets for the benefit of the beneficiaries. Trustees are under a duty to make the trust assets productive for their beneficiaries by investing the same in authorised investments. The Trustee Act 2000 confers a wide general power of investment and sets out the requirements which trustees must comply with when exercising this power in addition to complying with any applicable terms and conditions of the trust itself.

A trustee must comply with the lawful conditions of the trust if practicable except so far as those conditions are modified by the consent of all the beneficiaries being of age collectively or by the Court.

A trustee must be impartial and not exercise his powers so as to confer an advantage on one beneficiary at the expense of another. He must act fairly in making investment decisions which may have differing effects for different classes of beneficiaries.

Where a deceased's estate not including real property is to be held in trust created by Will for the benefit of persons in



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succession, the trustee must convert wasting or future or unauthorised parts of the estate into authorised securities being property of a permanent and income-bearing nature unless the Will states to the contrary.

Except to the extent that the terms of the trust or statute relieves them of such duty, a trustee must exercise reasonable care and unpaid trustees are bound only to use such due diligence and care in the management of the trust as businessmen of ordinary prudence and vigilance would use in the arrangement of their own affairs. The mere fact that a trustee has acted under legal advice will not necessarily excuse him where a breach of trust has occurred. A higher standard of diligence and knowledge is expected from paid trustees.

A trustee must not delegate his duties or powers to anyone else or to his co-trustee unless authorised by the terms of the trust or by law. Accordingly he may engage an agent to transact any business, do any act required to be done in the execution of the trust or by power of attorney delegate for a period not exceeding 12 months the execution or exercise of all or any of the trusts, powers and discretions vested in him as trustee.

Where there are more trustees than one, all must join in the execution of the trust unless the terms of the trust or the law otherwise allow.

Subject to certain exceptions, a trustee has no right to charge for his time and trouble unless for instance the terms of the trust so provide or all beneficiaries being of age have freely agreed to that effect or the Court orders to that effect.

A trustee must not use or deal with trust property or exploit his position for his own private advantage.

A trustee must keep clear and accurate accounts of the trust property and at all reasonable times at the request and cost of the beneficiary give him full and accurate information as to the amount and state of the trust property and permit him or his solicitor to inspect the accounts, vouchers and other documents relating to the trust. A trustee must keep trust monies in a separate account and not mix the same with monies not belonging to that trust.

In connection with trust property, a trustee has all the responsibilities that an outright owner would have – e.g. a duty to insure the property, to ensure that title to the property is in order, an ongoing duty to investigate the condition of the trust property, to recover or try to recover trust property or any debts or funds due to the trust and if necessary institute legal proceedings for the recovery of the same. A trustee is also under a duty to defend any action brought against the trust.

A trustee must ensure that the tax position of the trust is clarified and that proper tax returns are made and all the trust's tax obligations complied with and discharged.

A trustee must seek proper professional advice on matters in which he is not competent.

Charity trustees have additional duties to ensure that the charity is solvent and effective.

The above is only a brief outline in general terms of only some aspects of a trustee's obligations and is not intended to be exhaustive or a full statement of the law or legal advice to be relied upon for any specific factual situation. For any such specific factual situation, proper legal advice should always be sought from an appropriately qualified and competent legal adviser who is an expert and experienced in this complex area of the law.