



TRUSTEES NEED TO KNOW: THE TRUST DOCUMENT AND TRUSTEE'S DUTIES

Published on 2 August 2017

What is a trust?

A trust is an arrangement defined by law whereby an individual, or a group of people, are given legal title and responsibility for the ownership of assets for the benefit of some other person or group of people. It may be comprised of property, shares or just money.

How is a trust created?

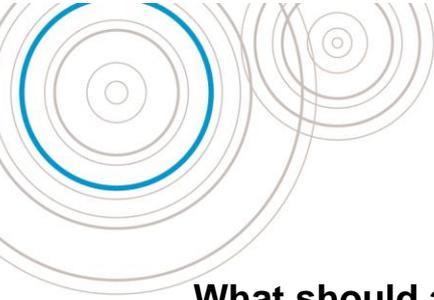
A trust is ordinarily created in one of two ways:

- by a deed of trust for a trust created during the lifetime (to take immediate effect) of the person or people giving assets to the trust; or
- by a will for a trust that is to be created on or shortly after the death of the person making the will.

The individual (or individuals) giving assets to the trust is/are known as the settlor(s).

What are a trustee's duties?

The unique concept of a trust is the separation of the legal ownership by the trustees and beneficial ownership by the beneficiaries. Trustees have duties of honesty, integrity, loyalty and good faith to the beneficiaries of the trust. The trustees must always act in the best interests of the beneficiaries. They must observe the terms of the trust, exercise reasonable care and ensure the correct distribution of assets, act impartially between the beneficiaries and provide certain information to the beneficiaries when asked to do so.



What should a trustee look for in the trust document?

The trust document (whether by lifetime settlement or will) states who is responsible for looking after the gifted assets (the trustees) and who is to benefit (the beneficiaries) as well as any rules or conditions that they must comply with.

The trustees have legal title to the assets in the trust and are responsible for administering the trust in accordance with its terms. The beneficiaries are able to benefit from the assets held in the trust.

The trust document may also nominate a “protector” who is responsible for ensuring that the trustees operate the trust in accordance with its terms and the intent of the settlor.

Trustees have various legal powers to administer a trust, the scope of which is set out in the trust. Some trusts are extremely prescriptive whereas other trusts allow the trustees to exercise their discretion on how best to allocate trust assets and income.

What about worldwide assets?

Additional consideration needs to be given in relation to worldwide assets. Not all jurisdictions recognise trusts. Moreover, certain jurisdictions impose forced heirship rules and/or are subject to matrimonial regimes that require property to be dealt with in a particular way. These regimes expose a trust holding applicable assets to potential challenges.

How can we help?

We act for trustees, executors, personal representatives and for individuals claiming against estates, trustees or other parties. We also often advise on complex and cross-jurisdictional issues, and regularly work alongside other intermediaries based offshore. Our team is recognised for our expertise in this field by the legal directories: The Legal 500 and Chambers & Partners.

If you have any questions arising from this Need to Know please do not hesitate to contact our Wills, Trusts and Inheritance Disputes Team:

contentioustrustsandprobate@kingsleynapley.co.uk

This **Need to Know** provides general guidance of the law in this area at the date of publication. Specialist advice should also be sought.