



TRUSTEES DUTIES

To be a trustee — what does it mean? Are you, or have you been asked to become, a trustee of a trust or under a will? Before you leap into the role with vim and vigour, we suggest that you consider a few things first.

AS A TRUSTEE

The position of trustee is an important one and creates a special relationship of trust between a trustee and the beneficiaries of the trust or will. This is called a ‘fiduciary’ relationship and it means that as a trustee, it is your duty to act in the best interests of all the beneficiaries of the trust or will. A trustee must always act honestly and with a level of care and skill that would be expected of a reasonable businessperson in administering the affairs of others.

As a trustee, it is important to be thoroughly familiar with the provisions of the trust deed or will, the assets held by the trust, the beneficiaries and their circumstances. However, the trustees’ responsibilities do not end there, as there are ongoing obligations to consider.

CORE TRUSTEES DUTIES INCLUDE:

1. Acting in a prudent manner to help safeguard the assets of the trust and ensuring that if, as a trustee, you are investing trust funds, you have the power to do so under the trust deed;
2. Being able to provide beneficiaries with access to certain information regarding the trust, if requested. Relevant information can include the trust deed; documents varying the trust; financial statements; and investment strategies. *NB: A trustee is not obliged to disclose documents which record reasons for exercising any discretionary powers. If you are a trustee and wish to receive guidance regarding what information is appropriate to disclose, we suggest you contact us;*
3. Monitoring trust matters, so that you can make informed decisions which take into account the trust assets and beneficiaries’ interests;
4. Keeping detailed and accurate records for the trust, such as correspondence and contracts with third parties; capital and income accounts; a detailed list of trust property; and relevant details of the trust, such as beneficiaries contact details;
5. Maintaining all records relating to the trust for the trust’s duration, or longer if required;
6. Meeting regularly (at least every 12 months) to make decisions regarding trust assets. The decisions made usually need to be unanimous. It is also important that trustees record, by way of resolution, their decisions and the reasons for these;
7. Ensuring proper management and administration systems are in place, and accounts and tax returns are prepared annually where the trust generates an income; and
8. Ensuring at all times your loyalty as a trustee lies with the beneficiaries. It is your duty and responsibility to protect the interests of all the beneficiaries. Where situations arise which place various beneficiaries in conflict with one another, you are expected to act in an even-handed and fair manner.

FURTHER RESPONSIBILITIES

As a trustee you are also required to act in a personal capacity. This means you need to be personally involved in decision making and only delegate your responsibility where permitted to do so — eg. where you are physically unable to perform your trustee duties. You need to make your own decisions, especially where the other trustees may be the settlors and/or beneficiaries of the trust.

As a trustee, you should take into account the interests of beneficiaries. Although, beneficiaries cannot dictate how your decisions are made. Trustees should also consider the settlor's stated wishes, which while not binding will provide useful guidance.

A trustee must not profit from their positions as such, unless the trust deed or will authorises it. A trustee must actively avoid situations where their personal interests may conflict with their duties to the trust and/or the beneficiaries.

FURTHER CONSIDERATIONS

- ◆ Your relationship to the individuals proposing the trust;
- ◆ Why the trust is being established?
- ◆ Who are the proposed co-trustees? Do they have particular expertise in certain areas and do you think you could work effectively with them?
- ◆ What is the level of involvement required of you?
- ◆ How much time and costs (if any) will be involved in the trusteeship?
- ◆ Possible conflicts of interest which may arise;
- ◆ If the trust is already established, has it been properly administrated to date? Could there have been breaches that require action?
- ◆ Where will the trust documentation be stored, and will you have easy access to this?

MORE INFORMATION

The duties and responsibilities of trustees can be multifaceted and this guide aims to provide a brief overview of significant trustees' obligations. However, if you have any questions about your current or future role as a trustee of a trust or under a will, we encourage you to talk these through with us. Give us a call or email us for more information.

Wellington Office:

Level 2, Zephyr House, Te Aro, Wellington 6011

Kapiti Office:

116 Rimu Road, Paraparaumu 5032

Otaki Office

208 Main Highway, Otaki 5512

Foxton Office:

74 Main Street, Foxton 4814

Postal Address:

PO Box 8091, Wellington 6143

Phone: 04 970 3600 **Email:** info@wakefieldslaw.com **Website:** www.wakefieldslaw.com