



## **DUTIES OF A TRUSTEE**

Under the new Trusts Bill, a Trustee has certain duties that they have to perform.

They are:

1. A Trustee must know the terms of the Trust
2. A Trustee must act in accordance with the terms of the Trust and must have regard to the objectives and beneficiaries of the Trust
3. A Trustee must act honestly and in good faith
4. A Trustee must deal with Trust property for the benefit of the beneficiaries
5. A Trustee has a general duty of care to exercise care and skill when administering a Trust
6. A Trustee has a duty to invest with the care and skill of a prudent person when investing Trust property
7. A Trustee must not exercise their power as a Trustee for their own benefit as a Trustee
8. A Trustee must consider actively and regularly whether they should be exercising their power as a Trustee
9. A Trustee must not commit Trustees to a future exercise of discretion
10. A Trustee must avoid a conflict of interests between the interests of the Trustees and the interest of the beneficiaries
11. A Trustee must act impartially in relation to all beneficiaries. This does not mean that all beneficiaries must be treated equally but they all have to be treated in accordance with the terms of the Trust Deed.
12. A Trustee must not make a profit from the trusteeship of a Trust
13. A Trustee must not take any payment for acting as a Trustee but they may be reimbursed for their legitimate expenses and disbursements when acting as a Trustee.
14. Trustees must act unanimously

## **DOCUMENTS THAT YOU MUST KEEP**

Every Trustee must keep a copy of the Trust Deed and any variation to the Trust Deed.

At least one Trustee must also keep the following documents and provide these to other trustees on request:

1. Records of the trust property, for example:
  - a. Agreement for Sale and Purchase
  - b. Acknowledgement of Debt
  - c. Deed of Gift
2. Resolution of Trustees
3. Any written contracts entered into, for example:
  - a. Agreement for sale and purchase of real estate
  - b. Deed of Lease
  - c. Mortgage documents with a bank
4. Financial accounts
5. Deed of appointment, removal or retirement of trustees
6. Memorandum of Wishes from the settlor
7. Any other documents necessary for the administration of the trust

These documents must be kept forever.

If a Trustee retires, these documents must be passed on to either the new Trustee or a continuing Trustee. The documents that show that a trustee has been retired or removed, must be given to the departing trustee.

## **GIVING INFORMATION TO BENEFICIARIES**

There is a presumption that a trustee must notify all beneficiaries of the basic trust information. That is:

1. The fact that a person is a beneficiary;
2. The name and contact details of the trustees;
3. Any time there is a change to any of the trustees and what those changes are; and
4. That the beneficiary has a right to request a copy of the trust deed or trust information.

If you choose to not notify a beneficiary of the above information, or other information which a beneficiary has requested, please talk to us so we can ensure you are not in breach of any rules.