

Being familiar with the terms of the will/deed

A duty exists for trustees to understand and to be fully aware of the terms of the trust. This is essential in order to carry out the purpose of the trust.

Obtaining control of the assets

The trustee must ensure that all the assets belonging to the trust are collected and fall within the trustee's control. The trustee must also become familiar with the type and condition of the assets involved.

Adhering to and carrying out the terms of the trust

Trustees have the duty to comply with and to carry out the terms set out in the trust deed unless the courts or legislation provide otherwise.

Acting impartially between the beneficiaries

Trustees have a duty to all beneficiaries to exercise their powers as trustees in an impartial manner. That is, the interests of one beneficiary cannot take precedence over another.

A trustee should not feel under pressure to benefit one beneficiary ahead of another and must act in the best interests of all beneficiaries, present and future.

Keeping and rendering proper accounts and to give full information when required

Trustees are required to keep proper accounts, which must be kept ready for disclosure when requested by beneficiaries or their authorised agents, and to provide beneficiaries with information about the financial state of the trust

Not delegating the trustee/s' duties or powers

Trustees have limitations placed on their ability to delegate the powers conferred on them.

Discretion

Trustees are not able to fetter their discretion (i.e. they cannot enter into arrangements which narrow/remove discretion).

Advice

A trustee can obtain from a suitable professional, however, that advice should not be acted upon without due consideration.

Paying and transferring the trust property and the income to the correct beneficiaries

The trustee is obliged to pay the income and capital of the trust to beneficiaries in accordance with the terms of the trust document.

Duty to act gratuitously

Trustees have a duty to act in and for the interests of the beneficiaries of the trust without pay. Exceptions to this duty include circumstances where provision exists in the trust deed, where an agreement exists or can be reached between the trustees and beneficiaries, or where the court approves.

Duty not to mix assets

Trustees have a duty to keep their personal assets and the assets of any trusts under their care separate and distinguishable, unless the trust deed provides otherwise or the courts so orders.

Duty to act unanimously

Trustees are required to make decisions regarding the administration of the trust unanimously. Their liability is both joint and several.

Investing the trust funds

Trustees have a general duty to invest any funds. All trust investments require annual reviews. This duty to invest must be exercised with the care, diligence and skill of an ordinary 'prudent person' or, where a professional trustee is appointed, a professional 'prudent person'.

Trustees must have regard to the terms of the deed or will, together with the provisions of Part III of the Trustee Act 1962 (WA).

NOTE: This information guide covers legal issues in a general way. It is not designed to express opinions on specific cases. It is intended for information purposes only and should not be regarded as legal advice. Further advice should be sought regarding your specific situation before taking any action.