



MacKenzie Webb Associates Ltd

17 Mary Vale, Godalming, Surrey, GU7 1SW

Email: mackenziewebb@btconnect.com

Tel: 01483 424343

Fax: 01483 414488

# GUIDE TO BEING A TRUSTEE

This guide should help you to understand what you will need to do now that you have been asked to be a trustee. It explains what a discretionary trust is, what benefits it offers, and what your duties as a trustee will be.

## **TRUST BACKGROUND**

### **WHAT IS A DISCRETIONARY TRUST?**

A discretionary trust is a legal arrangement which allows the owner of a life policy (settlor) to give his or her policy to a trusted group of people (trustees) who look after it. At some time in the future the trustees will pass it on to people from a group that the settlor has decided upon (the beneficiaries). The trustees have discretion about which of the beneficiaries to pass it on to, how much each will get, and when.

When a life policy is looked after in this way, it is said to be 'in trust'. The life policy which is in trust, and any payment received from the life policy are called the trust fund. This guide assumes that a life policy is the only thing in the trust fund at the start, and that the life policy includes terminal and critical illness cover.

### **WHAT ARE THE MAIN BENEFITS OF USING A DISCRETIONARY TRUST?**

Using a discretionary trust for a life policy has lots of practical and financial benefits. For example:

- **Inheritance tax** - It should help to ensure that any money paid out from the life policy would not be part of the estate of the person covered, helping to minimise inheritance tax.
- **Quicker payout** - It should help to ensure that the money paid out from the life policy can be paid to the right people quickly, without the need for lengthy legal processes.
- **Control of funds** - A trust can control when the money from the life policy will be paid out. This can ensure that children receive some financial support from the money, but do not have full access to it.

### **WHO IS INVOLVED IN A DISCRETIONARY TRUST?**

There are 3 important roles:

- **The settlor** - The person giving away their life policy is called the settlor. Once the settlor has put their life policy into trust they no longer personally own it and have limited rights to say how it's dealt with. However, the settlor is still responsible for paying the policy premiums, and is also

usually a trustee. It is possible to have joint settlors. The settlor chooses the trustees and the beneficiaries, and can give the trustees guidance on how he/she would like the trust fund to be used via letter of wishes.

- **The beneficiaries** - The people who can receive payment from the trust fund are called the beneficiaries. This means that it would be the beneficiaries who benefit from any pay out from the life policy. The people who may be a beneficiary are listed in the trust deed, but no beneficiary is guaranteed to receive any of the trust fund.
- **The trustees** - The trustees take legal ownership of the trust fund from the settlor. They then look after the trust fund, and, following a claim on the policy will make arrangements for payments to the beneficiaries. The trustees have discretion about which beneficiaries named in the trust will receive the trust fund and when. However, they must act in the best interests of the beneficiaries at all times and can only do what is allowed in the trust deed.

## **WHAT ARE THE IMPORTANT DOCUMENTS?**

There are 3 key documents:

- **The trust deed** - This is the legal document that creates the trust. It must be signed by the settlor and the trustees. It names the parties involved, says what roles they have, and gives details of the life policy which is being put into trust. The provisions in the trust deed are the basis of the trust arrangement. The trustees must act according to the trust deed, and cannot do things that the trust deed doesn't allow.
- **The letter of wishes** - As the trustees will have lots of decisions to make, the settlor can provide a letter of wishes, to help explain what they would like to happen to the trust fund. Unlike the trust deed, the trustees do not have to follow the letter of wishes. However, trustees usually find it to be a helpful guide on how best to manage and distribute the trust fund to the beneficiaries.

## **TRUSTEE RESPONSIBILITIES**

### **WHY HAVE I BEEN ASKED TO BE A TRUSTEE?**

When thinking about who to select as a trustee, people usually choose from their closest friends and family. These are often the people that they trust most and whose judgement they can rely on. As an alternative, they might choose a professional trustee, such as a solicitor.

Choosing somebody that they know and trust gives peace of mind. If something happened, they know that their wishes will be respected, and that the trust fund will be used to help the people they care about.

### **WHAT DO THE TRUSTEES HAVE TO DO AT THE START?**

At the start, the trustees should make sure they have the important documents, and that they are familiar with the terms of the trust, including their powers and duties.

Once a trustee is comfortable that they understand and accept what they have to do, they should sign the trust deed in the presence of a witness.

## **WHAT ARE THE MAIN TRUSTEE DUTIES I NEED TO BE AWARE OF?**

As a trustee, you are in a position of responsibility, and it is important that you understand the following key responsibilities:

- You and any other trustees must take legal ownership of the trust fund. At the start of the trust, the discretionary trust deed transfers legal ownership of the life policy from the settlor to the trustees.
- You are not allowed to profit personally from your role as a trustee, and, unless you are a professional trustee, you cannot be paid for your time. However, you may be able to claim back expenses in certain circumstances.
- You must agree with all of the other trustees when making trust decisions.
- You must make sure that you understand the terms of the trust, and that you don't do anything which is not allowed by the trust or by the law.
- You must act in the best interests of the beneficiaries, and exercise a high degree of care and honesty. If you act dishonestly, you may have to pay for the loss to the trust fund.
- You must make sure that you carry out your role as trustee personally, meaning that you cannot usually get someone else to undertake the role for you. However, this is possible in certain circumstances, such as using an investment professional to help invest the policy proceeds.
- You must regularly consider whether to make payments to the beneficiaries from the trust fund, and you should.

keep the assets held under review - taking investment advice from a professional adviser where appropriate. You must also keep clear and accurate records and accounts of trust property and ensure that all tax which the trust is liable for is paid. Before the life policy pays out, these are unlikely to be significant considerations. However, after a claim, they may become increasingly important, and you might wish to seek professional advice to help with this.

Being a trustee is an important responsibility, however it is unlikely that you will need specific or detailed knowledge of trust law to enable you to act effectively - the key thing is that you act honestly and in the best interests of the beneficiaries.

## **WHAT DO THE TRUSTEES HAVE TO DO AFTER THEY SIGN THE TRUST DEED?**

Once the trustees have signed the trust deed, and the trust has been created, they will usually not have much to do until the time comes to make a claim.

This is because the life policy will be the only thing in the trust fund, and usually won't have any value before a claim is due. There is therefore unlikely to be any tax to consider, and little else to manage, as it is the settlor, and not the trustees, who will usually be responsible for paying the policy premiums.

## **WHAT DO THE TRUSTEES HAVE TO DO WHEN MAKING A CLAIM?**

Following the death of the settlor, or on diagnosis of a terminal or specified critical illness, it is the trustees who will need to make a claim and arrange payment from the policy provider. Once the

trustees have arranged payment from the life policy, they must ensure that this is distributed properly.

- If the settlor has chosen to keep the benefit of terminal and critical illness cover, which will be clear from the trust deed, then the trustees must ensure that any payment made under the terminal and critical illness cover goes to the settlor. This is the only circumstance in which the settlor should receive payment from the policy.
- If the claim is due to the death of the settlor, or if the settlor hasn't chosen to keep the benefit of terminal and critical illness cover, then the trustees will need to distribute the money from the claim to the beneficiaries. The trustees must do this according to the trust deed, but also while taking account of the letter of wishes.

This usually means that either:

1. The trustees arrange for the trust fund to be paid to the beneficiaries immediately; or,
2. The trustees arrange for the trust fund to be invested, and, if required, for maintenance payments to be made to the beneficiaries from the trust fund, until it is appropriate to distribute the entire trust fund.

## **IMPORTANT NOTES**

This guide provides general information about the responsibilities and duties a trustee will have to undertake, once a protection policy has been placed into a discretionary trust. It is not intended to replace legal advice, and if you require legal advice or further information, you should talk to us or your solicitor.

We have based the information in this guide on our understanding of the laws relating to trusts and inheritance tax as at 1 October 2014. Although we have made every effort to make sure that the information is accurate, we cannot take legal responsibility for any particular statements.

This guide is based on our understanding of current law and HMRC practice, which can change. This guide assumes that a discretionary trust is used. We can also provide Flexible (interest in possession) Trust deeds, Absolute Trust deeds and a Survivor's Discretionary Trust (for use with joint life first death policies only). The information in this guide does not necessarily apply to business protection.

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