

“ Plain speaking legal advice ”

Executors and Trustees Frequently asked Questions

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

“ Plain speaking legal advice ”

What is the difference between an Executor and a Trustee?

Executor : A person appointed by a Testator to carry out the terms of his or her Will.

Trustee : A person who holds and administers property in trust for another.

When you are considering who to appoint in respect of your Will then it is not uncommon for the same people to be both Executors and Trustees. Executors exercise their authority jointly and severally but Trustees must act jointly.

- A sole Executor can issue a valid receipt to a purchaser of land but a sole Trustee cannot.
- A Trustee's paramount duty is to balance the interests of the beneficiaries whereas an Executor's duty is to consider the interest of the deceased's estate as a whole.

What are the main duties of Executors and Trustees?

There are many powers and duties set out in both statute and common law. Attached is a breakdown of the main duties but for more detailed information and advice please contact our Mrs Ruth Keighley who will be happy to discuss your requirements with you.

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

“ Plain speaking legal advice ”

The Process of Administering an Estate

(Responsibilities of Executors or Administrators (Personal Representatives) after obtaining the requisite Grant of Probate or Grant of Letters of Administration)

All of the deceased's property, and interests in property, relating to both personalty and realty, pass to his personal representatives.

Collection and preservation of the estate

Duty to collect: All assets lent or hired out by the deceased, and any arrears of rent due, must be collected by the Personal Representatives. Also, any unsecured debts must be recovered promptly.

Duty to preserve: The Personal Representatives must take reasonable care to preserve the deceased's assets and they will be liable for any that get lost, damaged or destroyed.

They are not under a strict duty to insure any of the deceased's assets unless there is a direction to this effect in the will. Bearing in mind their liability detailed above they are strongly advised to insure the deceased's chattels. They are, however, empowered to insure the deceased's buildings and other insurable assets against loss or damage by fire.

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

“ Plain speaking legal advice ”

Realisation of the Estate

Trust for sale : The Personal Representatives hold the deceased's assets on trust with a power of sale. They have the powers to sell, lease or mortgage the deceased's real and personal property for purposes of administration, and also during the minority of any beneficiary, or the subsistence of a life interest.

Carrying on the deceased's business : Personal Representatives have no authority to run the deceased's business after he dies. However, they may do so:

- in order to meet outstanding contractual obligations;
- with a view to selling it as a going concern;
- if the deceased's Will expressly allows it

“ Plain speaking legal advice ”

Payment of expenses, debts and liabilities

Personal Representatives are under a statutory duty to pay the expenses, debts and liabilities of the deceased with due diligence. If a debt is unpaid because the Personal Representative fails in this responsibility he may be personally liable to the creditor.

Funeral expenses: Personal Representatives must bear the cost of the funeral and may recover their reasonable expenses from the estate.

Administration expenses: These are expenses which are connected with the performance of a Personal Representative's duties.

“ Plain speaking legal advice ”

Distribution of the estate

Advertising for claims : As detailed above, as part of the procedure of administering an estate a Personal Representative may be personally liable for the debts of the deceased whether they are known about or not. However, in the case of unknown debts, this is limited by placing what are known as “statutory notices” pursuant to Section 27 of the Trustee Act 1925 in a local newspaper and also in the London Gazette. These notices then place a “deadline” for the receipt of claims which is not less than two months from the date of issue of the papers.

Where a beneficiary owes money to the estate: Where a beneficiary is entitled to a monetary gift under the Will, the Personal Representative may deduct the debt from the gift.

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

“ Plain speaking legal advice ”

Infant beneficiaries : Unless the Will makes provision for such a payment, Personal Representatives cannot distribute property to an “infant” because any person under the age of 18 years cannot give a valid receipt for property or money. A married infant can however give a valid receipt for income.

Appropriation : Personal Representatives may appropriate (transfer) part of the deceased’s estate in or towards the satisfaction of any legacy, share or interest in the deceased’s estate.

Rights of beneficiaries: During the administration period a beneficiary has no equitable rights in the deceased’s property. All he has is a right to ensure that the estate is properly administered.

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

“ Plain speaking legal advice ”

The Main Responsibilities and Powers of Trustees

The nature of the Trustees responsibilities

The Trustees basic functions are to perform duties and exercise powers provided for in the Trust instrument as well as general duties and powers prescribed by statute or the courts. Duties are obligatory (they must be done) while powers are discretionary (they may or may not be done).

The unanimity rule : Unless the Trust instrument provides otherwise Trustees must exercise their powers unanimously. The only Trustees that may operate on a majority decision are the Trustees of a charitable trust.

Remuneration of Trustees: Statute provides that a trust corporation or a professional trustee should be paid for services provided to the trust, albeit subject to limitations. This power does not apply to charitable trustees. Unless the Trust instrument provides otherwise lay trustees are not entitled to payment for administering the trust. They will, however, be repaid any reasonable expenses incurred.

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

“ Plain speaking legal advice ”

Standard of care:

Trustees must act with such care and skill that is reasonable bearing in mind two factors :

- any special knowledge or expertise the trustee has; and
- any special knowledge or expertise it is reasonable to expect him or her to have.

Unpaid Trustees – “*all those precautions which an ordinary prudent man of business would take in managing similar affairs of his own*”.

Paid Trustees – “*a higher standard of diligence and knowledge than an unpaid Trustee.*”

Fiduciary Duties

Unless otherwise allowed by the Trust instrument, Trustees must :-

Obtain the best price on selling trust property;

Not self deal;

Not compete in business with the trust.

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

“ Plain speaking legal advice ”

Duty to Invest

Unless expressly authorised by the Trust instrument, trust funds must be invested to provide:-

Diversity of investments;

A balance between income and capital.

Following the introduction of the Trustee Act 2000, Trustees are able to make any sort of investment as if they were absolutely entitled to the trust assets. They should, however, take account of the above standard criteria and also whether the trust is of income or capital. (A life tenant is entitled to income only whereas the “remainderman” is entitled to the capital – two separate trusts contained in the one Trust instrument). In addition, Trustees may now appoint nominees and custodians in respect of investments. By doing this the Trustee is deemed not to be delegating his duties merely employing an authorised agent to assist him in the performance of his duties. The agent must be given written instructions from the Trustees together with a written “policy statement”. Trustees still remain accountable for their own actions.

“ Plain speaking legal advice ”

Prior to the introduction of the Trustee Act 2000, investments had to be made into “authorised investments”. These fell into two categories, Narrower Range and Wider Range, with an allowable investment split of 3:1 where Trustees elect to invest in the wider range.

Narrower Range (Part I)

These are securities which usually have a lower rate of yield but are relatively secure because they guarantee a fixed rate of income and a capital base which is not prone to fluctuation. No investment advice is required by the Trustees for this category.

Examples - Defence Bonds, National Savings Bonds, National Savings

Certificates and deposits in the National Savings Bank.

Narrower Range (Part II)

This range consists of securities which are fixed as to the rate of income but which are liable to fluctuate in terms of their capital value and carry a higher risk than the Part I investments. Investment advice must be sought before making these investments.

Examples - Government and local authority gilt-edged securities,

Debentures of companies, deposits in building societies and

Mortgages of land with at least 60 years to run in leasehold.

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

“ Plain speaking legal advice ”

Wider Range (Part III)

These investments generally yield a higher rate of return than the narrower range but tend to be more susceptible to fluctuations in the financial markets. Investment advice must be sought before making these investments.

Examples - Shares in public limited companies quoted on the Stock

Exchange (the company must have a minimum paid up

Capital of £1million and must have paid dividends on all its

Shares in the five years preceding the investment.

Trustees must still carefully consider the trust investments both prior to initial purchase and throughout the administration period. They must obtain written advice on the suitability of the investments from an authorised agent. With regard to diversification, written advice should be obtained from an authorised agent “in so far as is appropriate to the circumstances of the trust”.

Watchmoor Park
Camberley
Surrey
GU15 3YL

tel: 01276 686222

4 Station Road
Aldershot
Hampshire
GU11 1HU

tel: 01252 322451

3&4 Market Place
Wokingham
Berks
RG40 1AL

tel: 01189 774045

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.