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Trustees' Duties

The Trusts Act 2019 will come into effect on 30 January 2021.

There are a number of changes in relation to duties of Trustees.

The Act introduces the concept of *Mandatory Duties* and *Default Duties*:

- *Mandatory Duties* are just that. They are duties which must be performed by the Trustee and cannot be modified by the terms of the trust.
- *Default Duties* must be performed by the Trustee unless they are modified or excluded by the trust deed.

Mandatory Duties (cannot be excluded)

There are 5 *Mandatory Duties* which are:

1. Duty to know the terms of the trust. There is an active duty on Trustees to read the trust documents. Any incoming Trustees must make reasonable inquiries into the trust's history;
2. Duty to act in accordance with the terms of the trust (unless consented to by all of the Beneficiaries);
3. Duty to act honestly and in good faith;
4. Duty to act for the benefit of Beneficiaries or to a further permitted purpose of the trust;
5. Duty to exercise powers for a proper purpose.

If you have a family trust, it may be worthwhile to take the time to familiarise yourself with the trust document including who the Beneficiaries are and the purpose of the trust.

Default Duties (can be modified)

The *Default Duties* of Trustees are:

1. General duty of care;
2. Duty to invest prudently;
3. Duty not to exercise power for own benefit;
4. Duty to consider exercise of power;
5. Duty not to bind or commit Trustees to future exercise of discretion;
6. Duty to avoid conflict of interest;
7. Duty of impartiality. This does not mean all Beneficiaries must be treated equally but rather all Beneficiaries must be treated according to the terms of the trust;
8. Duty not to profit;
9. Duty to act for no reward. Trustees are not entitled to remuneration;
10. Duty to act unanimously.

There may be a number of situations where it is worthwhile to modify these *Default Duties*, for example the duty in 3 above not to exercise a power for your own benefit in the common scenario where a Trustee is also a Beneficiary. If you have a professional Trustee then there will need to be a clause in the trust deed that a Trustee may be paid for their services.

The clauses in a trust deed can impliedly modify these *Default Duties* (without specially saying so) but ultimately this will depend upon the wording in each individual trust deed. If you already have a family trust, you may consider revisiting your trust deed and taking some advice on how these changes work with your existing deed.

20 MINUTE FREE

WANT to review your Family Trust structure?
THEN call us and take advantage of our 20 Minute Free interview