

## Duties of Trustees

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## **How to discharge your trustee duties**

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The most important duties of trustees are:

- the duty of efficient management;
- the duty to keep accounts and render them to beneficiaries;
- the duty to act personally; and
- the duty to act as a fiduciary.

### **Duty of efficient management**

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To discharge the duty of efficient management, you must:

- Familiarise yourself with the trust deed.
- Adhere to the terms of the trust at all times.
- Be aware of the trust's assets and liabilities and ensure that the assets are held properly in the name of the trustees.
- Identify the beneficiaries and ascertain their background, circumstances, needs, abilities and disabilities.
- Monitor and, if necessary, review on an ongoing basis the management and administration of the trust - for example, check bank statements, request and review investment reports, check financial reports and statements, etc.
- Invest the trust fund in accordance with the terms of the deed of trust.
- Keep abreast of trust issues so as to make well-informed and carefully thought-out decisions with due regard to the terms of the trust and the interests of the beneficiaries.
- Act with such due diligence and care in the management of the trust's assets as a person of ordinary prudence and vigilance would manage that person's own affairs.

### **Duty to keep accounts and render them to beneficiaries**

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To discharge the duty to keep accounts and render them to beneficiaries, you must:

- Ensure that information about the trust and the way in which the trust is being managed is recorded and accessible to you. Make relevant information available to beneficiaries when you consider disclosure to be in their interest. The information that can be disclosed includes:
  - documents such as the trust deed;
  - financial statements; and
  - investment strategies,but not your administrative work papers or other documents recording your reasons for exercising your powers and discretions.
- Keep all trust records for at least as long as the term of the trust and for a reasonable period after the trust has been terminated, even if the beneficiaries have given you a release. The records may be needed if an issue arises or an allegation is made against the trustees after the termination of the trust.

## **Duty to act personally**

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To discharge the duty to act personally, you must:

- Be personally involved in the decision-making process and personally make decisions.
- Achieve unanimous decisions by trustees.
- Delegate your responsibilities only where delegation is permitted -for example, where:
  - the trust deed says certain powers and discretions can be delegated; or
  - the trust property is outside New Zealand; or
  - you will be absent from New Zealand
  - you are physically incapable of performing your duties as a trustee

Such delegation should be by power of attorney, executed as a deed. Note that you cannot delegate to a single co-trustee under s 31 of the Trustee Act 1956.

- Make your own decisions and do not allow anyone to dictate to you how your discretions should be exercised. You are permitted to take the interests of beneficiaries into account when making a decision, but you must not let a beneficiary dictate to you how the decision should be made.
- Have regard to any instructions given by the settlor/settlors of the trust in the form of a memorandum of wishes
- Properly appoint professional advisers such as lawyers, accountants and financial or other advisers and instruct and supervise them properly.
- Ensure that you are properly informed when you make a decision and that you make the decision at the appropriate time. Do not commit yourself in advance in a manner that restricts your ability to revisit the issue at a later date based on circumstances at that time.

## **Fiduciary duty**

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The discharge of fiduciary obligations require that:

- You may not profit from your position as trustee unless authorised to do so. One exception is where you have the right to be paid for your services, either under the trust deed, by statute, with the consent of all beneficiaries, or by order of the court.
- Unless there is prior authorisation (ie, in the trust deed) or the consent of all the beneficiaries, you must not sell property to, or purchase property from, the trust.
- Avoid situations where your own personal interest may conflict with your duties to the trust (ie, the beneficiaries).
- Avoid putting yourself in a position where there is a conflict or the possibility of a conflict between your duties to the beneficiaries and duties to other people.

At all times **protect the interests** of the beneficiaries. You must not set up or assist any third party to make a claim against the trust. In the event of any such claim, your loyalties lie with the beneficiaries.