

Your guide to being a trustee



Introduction

Trusts have been used alongside life assurance for many years because they offer three important benefits:

- 1** To ensure payments are made without any probate delay, so long as there's at least one surviving trustee,
- 2** To help mitigate the effects of inheritance tax, as proceeds fall outside the policyholder's taxable estate on death,
- 3** To make sure the proceeds will be paid to whoever the policyholder nominates or would have chosen.

HM Revenue & Customs (HMRC) practice and the law relating to taxation and trusts are complex and subject to individual circumstances and changes which cannot be foreseen. We have based this information on our understanding of law and practice as at May 2021. We make every effort to ensure that this information is helpful, accurate and correct but it may change or may not apply to your personal circumstances. Before taking any action you should always check with an appropriate adviser, as we cannot accept responsibility for any action taken on the basis of this information alone.

What problems are created if policies are not written in trust?

This is best demonstrated using an example; a life assurance policy is taken out to provide a cash lump sum in the event of death for the benefit of the surviving spouse or civil partner, and family.

If the person whose life is assured is also the owner of the policy then, when he or she dies, the proceeds from the policy will be added to the value of everything else they own – their ‘estate’ – creating three possible problems.

- The Legal Personal Representatives of the estate, who are responsible for sorting out the affairs of the person who has died, won't be able to obtain the proceeds of the policy until probate has been granted. This may take up to six months, sometimes much longer.
- All or part of the policy proceeds may be reduced by inheritance tax, unless they are passing to the policyholder's spouse or civil partner.
- If there is no valid Will, the estate, including the policy proceeds, will have to be distributed according to the laws of intestacy. This may be very different from the way in which the deceased had intended.

All these potential problems can be easily and simply avoided by putting the policy into a suitable trust. The proceeds will not form part of the deceased's estate, there will be no probate delay before the proceeds can be paid out, little or no liability to inheritance tax on the proceeds, and the beneficiaries can be clearly identified.

The trustees

The trust property, in this case the life assurance policy (including single payment life assurance policies more widely known as investment bonds) is administered by a group of people called ‘trustees’ for the benefit of the beneficiaries.

You have been appointed as a trustee and this booklet gives you guidance on how trusts work and what you might have to do in your role as a trustee.

Providing trustee identification

The Joint Money Laundering Steering Group guidance notes require us to confirm the identity of everybody, including trustees, who control the trust property (the life assurance policy or investment bond). We therefore need evidence of your identity (ID) before we can act on your instructions as a trustee.

Without ID from all trustees we may not be able to make changes to the policy, or pay out the proceeds of the policy.

How trusts work

Trusts are all designed to do a similar job, but depending upon the objectives of the persons creating the trust and the financial plan for which the trust is designed, different trusts will have different features.

As far as possible, our trusts are written in plain language. However, there are several words and phrases which, although not in everyday use, need to be included in the trust provisions. In addition, when explaining trusts, it is sometimes necessary to use technical language.

Who's who?

The proceeds of the policy are usually used to benefit somebody else, usually surviving members of the family, or sometimes business associates. The policyholder names the persons who they wish to benefit from the policy in the trust document.

- The policyholder who is declaring the trust is usually called the **donor or settlor** (depending on the type of trust used) – in Scotland they are referred to as ‘the truster’. If the policy covers two people, the policyholders will be joint settlors/donors.
- The persons who are, or may become, entitled to receive the policy proceeds are called the **beneficiaries**.
- The persons who control the trust property, that is the life assurance policy or investment bond, and make sure the terms of the trust are carried out, are called the **trustees**.

You have been appointed as a trustee and others may also have been, or may in the future be, appointed. On Zurich trusts, the settlors/donors are automatically trustees.

In some trusts, the decision as to who will be the beneficiary is final and cannot be changed. These are called ‘absolute’ or ‘bare’ trusts. Details of beneficiaries are included in the trust document at outset, and can never be changed.

Other trusts are more flexible, such as ‘discretionary trusts’. Discretionary trusts allow changes to beneficiaries to be made later.

As you will see from any standard Zurich discretionary trust deed, a wide range of potential beneficiaries are listed; those are people who could in the future benefit from the trust. The trust also includes named individuals who are the default beneficiaries. They will benefit, in the absence of other beneficiaries being appointed, if the trust fund has not already been fully distributed when the trust expires, usually in 125 years' time.

The importance of your role

While the settlor/donor is alive – and where the trust powers allow – he or she will make many of the decisions concerning the trust without having to refer to you. However, the settlor/donor may ask you to acknowledge any changes to the trust or the policy. You will also have to take part in certain decisions, for example, if it is suggested that a policy be cashed in.

In addition, if the settlor/donor has given up their right to exercise the power of appointment (that is, decide who should benefit from the trust), you will also have to agree to any appointments before they can take place.

If there are a large number of trustees and/or trustees based outside of the UK, it can lead to delays when changes are being made to a policy that require all trustees to acknowledge or approve the change in advance.

If the trust is a discretionary trust, we recommend you check with the settlor from time to time what their intentions would be on death, especially with regard to beneficiaries. If the settlor dies, the circumstances at the time may mean the beneficiaries are no longer appropriate. One of your first responsibilities may be to review with the other trustees whether to make any changes to any beneficiaries.

After the death of the settlor (or, if in relation to a Relevant Life Policy Trust, after the death of the member), you and any co-trustees can jointly decide to appoint the proceeds to any beneficiaries. However, depending on the type of trust, making changes could have taxation consequences, and we recommend you seek appropriate professional advice if you and your co-trustees wish to exercise these powers. You will not, of course, be able to make any changes to beneficiaries if the trust is an absolute/bare trust.

Your other duties as a trustee (you will be responsible jointly with any other surviving trustees) include sending us the policy document and the death certificate. Depending on the circumstances, you may contact the company directly, or go through the deceased's adviser.

As long as you and any co-trustees are happy that the beneficiaries are those the settlor chose or would have chosen, and you have the proceeds of the relevant policies, your course of action will often depend on the age of the beneficiaries:

- If the beneficiaries are 18 years of age or over, you and your co-trustees can decide (or, depending on the type of trust, you may be obliged) to distribute the policy proceeds to them according to the provisions of the trust. This completes your duties.
- If the beneficiaries are under 18 years of age, the trustees will normally continue to administer and/or reinvest the trust assets. As the trust is continuing, the trustees must make sure these trust assets are managed according to the law, that proper records are kept, and that appropriate tax returns are made, until such time as the beneficiaries are old enough to receive the trust fund. You and your co-trustees have the power to use income, and capital, for the benefit of the beneficiaries – for example, to pay inheritance tax where appropriate, or to pay school fees.

The trustees may decide to engage the services of a solicitor to guide them while the trust remains in force.

Trustees may feel, particularly when payment of income is – or becomes – a feature of the trust, or before the proceeds of a life assurance policy are paid, that it would be beneficial to set up a trustee bank account.

Overall, trustees must always act in the best interests of the beneficiaries.

You must not put yourself in a position where your own interest conflicts with that of the beneficiaries. Any personal financial benefits arising from being a trustee must be declared and transferred to the trust (although a professional trustee, like a solicitor or accountant, can make reasonable charges for work carried out on behalf of the trust).

If your circumstances change (for example if you move house) or you decide you wish to resign as a trustee, please tell the settlor/donor, if he or she is alive, and any co-trustees, so that the necessary alterations can be made to the trust.

This booklet is a summary of your duties as a trustee. It deals with what is likely to happen in certain circumstances. The trustees' powers are detailed in the relevant trust provisions.

Taxation and trust registration

As a trustee, you'll also be responsible for reporting and arranging for the payment of any taxes on behalf of the trust. This includes registering the trust with HMRC Trust Registration Service if a liability arises for income tax, capital gains tax, inheritance tax, stamp duty land tax or stamp duty reserve tax.

However, it may be necessary to register the trust even though no taxes have arisen on the trust. Guidance on when and how to register a trust can be found at gov.uk/guidance/register-a-trust-as-a-trustee and zurich.co.uk/insurance/trust-registration – in some cases, professional advice may be required.

Should Zurich require proof of registration, a form can be downloaded from the Trust Registration Service website.

Summary

Writing a policy in trust is a simple, beneficial step and as a trustee you have an important role to play.

If you have any queries about this booklet or your role as a trustee, please contact your adviser.

If you'd like a copy of this in large print, Braille,
or audio, please let us know.