



# TRUSTEE GUIDE

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FOR USE OF THE TRUSTEES OF  
A VITALITYLIFE TRUST

*ValidityLife*

# AN INTRODUCTION TO TRUSTS FOR TRUSTEES

AT VITALITYLIFE WE UNDERSTAND THAT SETTING UP A TRUST CAN MEAN COMPLEX LEGAL DOCUMENTS AND TECHNICAL JARGON. YOU ARE AN INTEGRAL PART TO THE FUNCTIONING OF THE TRUST SO WE WANT YOU TO UNDERSTAND WHAT YOUR ROLE AS A TRUSTEE INVOLVES AND WHAT YOUR DUTIES ARE TO THE TRUST.

## FACTS AND QUESTIONS:

### Q. WHAT IS A TRUST?

Setting up a trust is a method of making a gift to beneficiaries whilst providing the settlor(s) with some control over who benefits and when they benefit. The trustees need to be appointed to control or administer the trust fund for the settlor(s) instead of the trust fund just being passed directly to the beneficiaries.

When the plan is held in a valid trust, it will not be subject to inheritance tax (IHT) as part of the settlor(s) taxable estate. The other main advantage of a trust is to avoid having to produce a grant of probate to access the policy proceeds, meaning faster payment of the benefits to the beneficiaries. On death or serious illness of the settlor VitalityLife will pay the trustees directly.

### Q. WHO CAN BE A TRUSTEE?

Anybody can be a trustee as long as the person is over 18 years old (16 in Scotland). They should also be of sound mind and financially stable, as they may have to manage the trust fund. Usually two or more trustees are appointed.

### Q. WHO IS THE SETTLOR?

The person who sets up the trust is called the settlor. The settlor is automatically the first trustee of the trust and will appoint additional trustees. For joint life plans there will be two settlors and both need to complete the trust form.

### Q. WHAT IS THE TRUST FUND?

The trust property or fund will comprise of the life or serious illness insurance policy taken out with VitalityLife. The trustees main duty is to manage the trust fund for the beneficiaries and ensure that the beneficiaries benefit from the proceeds of the trust fund. In the case of a discretionary trust, the beneficiaries will be chosen by the trustees but in the case of an absolute trust, the beneficiaries will be pre-determined by the settlor(s).

### Q. Can a trustee also be a beneficiary?

It is possible for a trustee to also be a beneficiary but it does create a potential conflict of interest so there should always be one other trustee who is not benefiting to make sure decisions over the trust fund are independent.

### Q. What if the trustee does not want to act as a trustee anymore?

If you decide that you no longer wish to act as a trustee, you can retire, although you will still be responsible for your decisions whilst a trustee. It is also possible for trustees to be removed but there must however be at least one trustee left, should this be contemplated. It may be necessary to make another trustee appointment. VitalityLife has a separate form to facilitate these additions and removals.

## **YOUR DUTIES AS A TRUSTEE:**

### **1. ACTING IN THE BEST INTERESTS OF THE BENEFICIARIES**

You must do whatever is in the best interests of the beneficiaries. One of the ways to do this is to ensure you act within the terms of the trust. For this reason it is important for you to read the trust deed and be familiar with its terms.

### **2. PROTECTING AND PRESERVING THE TRUST FUND**

You must always act to protect and preserve the trust fund, and so should ensure any loans made by the trust or debts owed to the trust are repaid. In addition, you must not use the trust to make a profit for yourself. If you fail to protect the trust, the beneficiaries may take legal action against you to recover the proceeds.

### **3. ADMINISTERING THE TRUST FUND**

As a trustee for a discretionary trust, you will need to select, along with any other trustees, which of the beneficiaries will receive the proceeds of the trust.

As trustee of an absolute trust, you will ensure that the proceeds of the trust go to the beneficiary(ies) already selected by the settlor.

### **4. YOU MUST NOT USE THE TRUST TO BENEFIT YOURSELF**

While it is possible in some circumstances if you are a professional trustee to charge a reasonable fee for your services, you should not use the trust to make a profit for yourself. You should never use your position as a trustee to gain work or business for yourself.

### **5. TO INVEST THE TRUST FUND**

You will have the powers to invest the trust fund before it is appointed to the beneficiaries. You may decide to use the trust fund to acquire either income or non income producing assets including other life assurance policies or stocks, funds, shares, securities or other investments or property. You should get professional advice should you decide to invest the trust fund, unless this would be inappropriate due to you already being qualified to give this advice or if the trust fund is small enough not to warrant the cost of advice.

You can if you wish, delegate the powers of investment to someone else but that person cannot make decisions over the distribution or payment of trust funds.

### **6. TO KEEP RECORDS OF DECISIONS**

You have the duty to keep a record of any changes or decisions you make that affect the trust fund and any professional investment advice you take. You should always keep trust accounts, including any loans that are made to the beneficiary.

### **7. TO DEAL WITH THE TRUST FUND WITH REASONABLE CARE AND DILIGENCE**

You must act with reasonable care and diligence whether investing the trust fund or carrying out any other power. It should be borne in mind that the beneficiaries could take legal action against you if you do not meet this duty.

### **8. TO TAKE DECISIONS WITH THE OTHER TRUSTEES**

If there is more than one trustee, the trustees need to act together in making decisions about the trust. This means they must reach decisions unanimously.

## YOUR POWERS AS A TRUSTEE:

The VitalityLife trusts set out a number of powers for the trustees:

### 1. The power to deal with the trust fund as owner

You have the power to deal with the trust fund as an owner and to exercise any option within the plan.

### 2. The power to borrow money

You have the power to borrow money using the plan as security in order to pay any overdue or future premium or any other sum necessary for maintaining the plan.

### 3. The power to mortgage, surrender or otherwise deal with the plan

As described.

### 4. The power to invest or apply the trust fund

You have the power to invest the trust fund or use it for the purchase of assets including other life insurance policies or stocks, funds, shares, securities or other investments or property.

### 5. The power to pay capital out of the trust

You have the power to pay or transfer any capital under the trust or income from it, to the parents or guardian of a beneficiary who is under a legal disability.

In addition, trustees have a number of other powers given to them in law:

### 6. The power of delegation

Individual trustees are allowed to delegate their powers for a maximum of 12 months by Power of Attorney. However, trustees acting jointly can also delegate any function except functions relating to:

- the distribution of the trust fund;
- the allocation of fees or other payments to income or capital; and
- the power to appoint trustees.

In addition, a trustee may not delegate their powers to a beneficiary of the trust.

### 7. The power of insurance

Trustees are free to insure any trust asset for any risk as they see fit.

### 8. The power to charge

Any trustee (other than the settlor or a spouse of the settlor) who is a solicitor or other person engaged in any profession or business is entitled to charge for their trustee services, whether in the ordinary course of their business or not.

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The information in this Trustee Guide is based on VitalityLife's understanding of the law. We have made every effort to ensure it is accurate but accept no responsibility for our interpretation of the law, or future changes in the law.

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