

# CHILDREN'S TRUSTS

## Management of Trusts Where A Beneficiary Is A Minor

### TO THE TRUSTEE:

You are receiving this brochure because you have been appointed as a Trustee of a child's money or property under a Will, a Trust Document or a Court Order. In other words, you have been entrusted with the management of a child's money or property. You are expected to administer the child's money or property with the utmost care and integrity. **You are required to always act in the best interests of the child.** The reference to "child" in this brochure is to a person under the age of 19 years.

**A Trustee** is a person or company that holds property on behalf of a beneficiary. A Trustee is a fiduciary, which means that by law he/she is required to act for the benefit of the beneficiary. A trustee is expected to carry out the terms of the trust instrument, to defend the trust, to prudently invest the assets of the trust, to act with impartiality towards all the beneficiaries of the trust, to account for his/her actions as Trustee and to keep the beneficiaries informed about the trust. A Trustee must not delegate his/her duty, profit from his/her role or place him/herself in a position of conflict of interest. A Trustee must always act in the best interest of the beneficiaries.

The information in this brochure is provided by the Public Guardian and Trustee of British Columbia as a general guide for persons who are Trustees of money or other property left to a child. It has been prepared to assist Trustees **but is not a substitute for legal advice from a lawyer**. The Public Guardian and Trustee recommends that a Trustee seek legal advice from a lawyer before making decisions on behalf of the child or the Trust. This brochure is for Trustees in British Columbia. Each province of Canada has its own laws about trusteeship and children's money or other property.

There is no difference if the Trustee is the parent or guardian, all trustees are all held to the same standard. Although a person may be appointed Trustee of money or other property, this brochure will generally refer to money.



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## MAKING INVESTMENT DECISIONS

A Trustee's first step is to determine how he/she will invest the child's funds. If the document which creates the trust does not specify how the child's funds are to be invested, a Trustee is required to comply with section 15 of the *Trustee Act* of British Columbia. The *Trustee Act* states that "a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments".

An unofficial convenience version of the *Trustee Act* is found at:

<http://www.qp.gov.bc.ca/statreg/>.

A Trustee should obtain advice from a financial advisor and/or a lawyer when investing trust money. The original trust money a Trustee receives on behalf of a child is called the capital while income is money that the capital has earned while invested. Some criteria that may be considered when determining if an investment is prudent include:

- adopting a balanced investment strategy
- protecting capital and providing income
- choosing suitable risk and return objectives
- having a reasonable diversity of investments
- using caution in delegating authority to agents (e.g., to mutual fund managers)
- incurring only reasonable and appropriate costs

## SETTING UP THE INVESTMENT

When a Trustee invests a child's funds, the Trustee must ensure that the investment is registered in the name of the Trust or on behalf of the beneficiaries of the Trust. If the investment is not registered in the name of the Trust, a false impression may be created that the Trustee personally owns the investment.

Money held in trust by a Trustee belongs to the beneficiary of the trust and not to the Trustee. A Trustee holds and protects the trust money and, if authorized by the terms of the Trust, uses the money for the exclusive benefit of the beneficiary (child).



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A Trustee cannot personally benefit from the trust money. A Trustee cannot borrow the trust money or lend it to anyone else.

Any major bank, credit union or trust company can assist a Trustee in setting up a trust account.

## **DUTY TO KEEP A CHILD'S MONEY SEPARATE FROM A TRUSTEE'S OWN MONEY**

A Trustee must not mix personal funds with trust funds. The Trust money must not be held in a Trustee's personal account or in an account which is held jointly with the beneficiary (child). No person other than the Trustee should have signing authority for the trust account.

## **MAKING DECISIONS ABOUT EXPENDITURES**

A Will, Trust Document, or Court Order may give a Trustee discretion to make expenditures from the trust and/or release part or all of the trust money for the child before the termination of the trust. The Will, Trust Document, or Court Order will specify whether the Trustee is authorized to release income or capital or both. A Trustee is not allowed to delegate his/her discretion to make expenditure decisions. If a Trustee is unsure if he/she has authority to release any of the funds from the trust or is unsure about the extent of that authority, the Trustee should consult his/her lawyer.

## **HOW EXPENDITURES ARE CARRIED OUT**

Where a Will, Trust Document or Court Order gives the Trustee authority to allow early release of part or all of the funds and the Trustee has exercised his/her discretion in favour of releasing part of the funds, the Trustee is normally required to ensure that the funds are used for the purpose the Trustee has authorized.

Sometimes, a Will, Trust Document or Court Order will authorize a Trustee to release part of the funds to the child's parents or guardians with instructions as to how the funds are to be used.



A Trustee will be personally responsible for any losses to the trust money arising from improper or unauthorized release of the trust funds or trust property. If the Trustee is in doubt about releasing funds, advice from a lawyer should be obtained.

## RECORD-KEEPING AND ACCOUNTABILITY

A Trustee is accountable for his/her management of the Trust funds. A Trustee must keep a record of all transactions in relation to the trust money. A Trustee should keep all financial statements detailing income earned by the Trust, as well as a record of all expenditures from the income or capital of the Trust.

Unless the Will, Trust Document or Court Order says otherwise, a Trustee is required to account in accordance with section 99 of the *Trustee Act*.

Section 99 of the *Trustee Act* requires an Executor or a Trustee under a Will to present his/her first set of accounts to the Court for a “passing of accounts” within two years from the date probate was granted and to pass his/her subsequent accounts at the times the Court directs. Trustees appointed other than by a Will should consult with a lawyer regarding their duty to account.

In the normal course, Trustees may provide copies of their accounts to a child’s parents or guardians from time to time so that the parents or guardians may be satisfied that their child’s interests are well protected. Sharing the accounts with the parents or guardians may help prepare their child to receive the money or property when the trust comes to an end. If the parent or guardian is a Trustee, there is no requirement to share the accounts with a third party but detailed records and accounts should be maintained. If a person, including a beneficiary (child) has reason to believe that the Trustee may not be managing the Trust funds according to law, he/she may contact the Public Guardian and Trustee by telephone, fax or email correspondence. The Public Guardian and Trustee may investigate and may require the Trustee to produce his/her accounts to the PGT.



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## TERMINATION OF THE TRUST

A Trustee must continue to hold the Trust funds for the period stipulated in the Will, Trust Document or Court Order. A Trustee may not end the Trust early by paying the money to a child or the child's parents or guardians. Unless it is authorized in the Will or Trust Document, a Trustee cannot appoint someone else to act as Trustee in his/her place.

If a Trustee is unable to continue in the role of Trustee, he/she may ask the Supreme Court of British Columbia for an Order appointing a successor Trustee. If there is a compelling reason for a Trustee to be discharged from his or her duties before the end of the Trust period, the Trustee should consult a lawyer.

At the termination of the trust, a Trustee provides a final accounting to the beneficiary and asks the beneficiary to approve the accounts and release the Trustee before the Trustee transfers the trust money to the beneficiary. A Trustee should obtain confirmation of receipt of funds from the beneficiary.

For assistance in obtaining legal advice, call the Lawyer Referral Service at: 604.687.3221 or 1.800.663.1919 (toll free outside the Lower Mainland).

Copies of this brochure are available from the Public Guardian and Trustee or on its website: [www.trustee.bc.ca/reports\\_publications/index.htm](http://www.trustee.bc.ca/reports_publications/index.htm)

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