

CHILDREN'S TRUSTS

Management of Trusts Where A Minor is a Beneficiary

TO THE TRUSTEE:

You are receiving this brochure because you have been appointed as a trustee by a will, a trust document, a court order or section 178 of the *Family Law Act* where a beneficiary is a minor. In British Columbia, children are minors until they reach 19 years.

As a trustee, you are expected to administer the money or property with the utmost care and integrity. **You are required to always act in the best interests of the minor.**

A trustee holds money or property on behalf of a 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 and 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.

The information in this publication is provided as a general guide for persons who are trustees of money or other property left to a minor. It has been prepared to assist trustees **but is not a substitute for legal advice.**

The Public Guardian and Trustee (PGT) recommends that a trustee seek legal advice before making decisions on behalf of the minor or the trust. Assistance in obtaining legal advice is available by calling the Lawyer Referral Service at 604.687.3221 or 1.800.663.1919 (toll free from outside the Lower Mainland).

All trustees, including parents and guardians, are held to the same standard.

MAKING INVESTMENT DECISIONS

A trustee's first step is to determine how the trust funds will be invested. If the document which creates the trust does not specify how the funds will be invested, a trustee is required to comply with the *Trustee Act*. The 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.bclaws.ca/>

A trustee should obtain professional advice from a financial advisor and/or a lawyer when investing trust money. The original trust money that a trustee receives on behalf of a minor 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 the 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 or the *Trustee Act*, uses the money for the exclusive sole benefit of the beneficiary (minor).

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 TRUST MONEY SEPARATE

A trustee must not mix trust funds with his/her personal 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 (minor). No person other than the trustee should have signing authority for the trust account.

RELEASING FUNDS FROM THE TRUST

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 minor 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.

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 minor's parents or guardians with instructions as to how the funds are to be used.

If you are acting as trustee under section 178, of the *Family Law Act*, the trustee is required to follow the *Trustee Act* when considering whether or not to make expenditures from the trust.

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 a lawyer.

A trustee is personally responsible for any losses to the trust money arising from improper or unauthorized release of the trust funds or trust property.

RECORD KEEPING AND ACCOUNTABILITY

A trustee is accountable for the 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 the *Trustee Act*.

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 subsequent accounts at the times the court directs.

Under normal circumstances, trustees can provide copies of their accounts to a minor’s parents or guardians from time to time so that the parents or guardians may be satisfied that their minor’s interests are well protected. Sharing the accounts with the parents or guardians may help prepare their minor 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 any person, including a minor beneficiary has reason to believe that the trustee may not be managing the trust funds appropriately according to law, he/she may contact the PGT. The PGT may investigate and may require the trustee to produce the accounts to the PGT.

TERMINATION OF THE TRUST

A trustee must continue to hold the trust funds for the period stipulated in the will, trust document, court order, or until age 19 unless a will states otherwise. A trustee may not end the trust early by paying the money to a minor or the minor's parents or guardians. A trustee cannot appoint someone else to act as trustee in his/her place unless it is authorized in the will or trust document.

If a trustee is unable to continue in the role of trustee, an order from the Supreme Court of British Columbia is required appointing a successor trustee. If there is a compelling reason for a trustee to be discharged from his/her duties before the end of the trust period, the trustee should consult a lawyer.

At the termination of the trust, a trustee must provide final accounting to the beneficiary. After the beneficiary has approved the accounts and released the trustee, the trustee must transfer the trust money to the beneficiary or the beneficiary's legal representative. A trustee should obtain confirmation of receipt of funds from the beneficiary.

Contact the Public Guardian and Trustee

Child & Youth Services
Public Guardian and Trustee
700-808 West Hastings Street,
Vancouver, BC V6C 3L3
Tel: 604.775.3480
email: cys@trustee.bc.ca

www.trustee.bc.ca
email: webmail@trustee.bc.ca

Toll free calling is available through Service BC. After dialing the appropriate number for your area (below), request to be transferred to the PGT (regular office hours 8:30am-4:30pm, Mon-Fri).

Vancouver	604.660.2421
Victoria	250.387.6121
Elsewhere	800.663.7867