

# Children's trusts

Management of trusts where the beneficiary is under 19

## Acting as trustee where the beneficiary is under 19

A person is appointed as a trustee for a person under the age of 19 through a will, a trust document, a court order or as per s. 178 of the Family Law Act.

When someone is a trustee, you are required to administer the money or property with care and integrity. You must always act in the best interests of the young person.

As trustee, it's your job to follow the terms in the trust, to defend the trust if it's required and to carefully invest the assets of the trust. You must act without bias, keep trust accounts and keep the beneficiary of the trust informed. You cannot delegate your duties to someone else and you cannot profit from acting as trustee or place yourself in a position of conflict of interest. All trustees, including parents and guardians, are held to the same standard of care.

The following information is to help guide your actions as trustee but it is not a substitute for legal advice. If you need assistance with making decisions, we recommend you seek legal advice. You can find a lawyer by calling the Lawyer Referral Service at 604-687-3221 or 1-800-663-1919 (toll free from outside the Lower Mainland).

### Making investment decisions

One of the first things you must do is decide how to invest the funds in the trust. If the document that created the trust does not state how the

funds are to be invested, you are required to make investments in compliance with the Trustee Act. The Act states that "a trustee must exercise the care, skill, diligence and judgment that a prudent investment would exercise in making investments".

As trustee, you should get professional advice from a financial advisor or a lawyer to help you invest the funds. Some things you will want to consider, to help you decide if an investment is prudent include:

- Adopting a balanced investment strategy
- Protecting capital and providing income. Capital is the original money that was put into the trust. Income is the money that the capital has earned from being invested
- Choosing suitable risk and return objectives
- Having a reasonable diversity of investments
- Using caution in delegating authority to agents (for example, mutual fund managers)
- Making sure costs are reasonable and appropriate

### Setting up the investment

Make sure that the investment is registered in the name of the trust or on behalf of the beneficiary of the trust (a trust account). To put the investment in the name of trustee creates the false impression that the trustee owns the investment. 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 sole benefit of the beneficiary.

As trustee, you cannot personally benefit from the trust, you cannot borrow money from the

trust and you cannot lend money from the trust to anyone else. All major banks, credit unions or trust companies can help you set up a trust account.

### **Duty to keep trust money separate**

You must not mix trust funds with your personal funds. You must not put trust funds into your personal account or in a joint account with the beneficiary. Only the trustee should have signing authority for the trust account.

### **Releasing funds from the trust**

As trustee, you must follow the directions listed in the will, trust document or court order. These documents will specify if you have discretion to make expenditures or release money from the trust before the trust ends. You cannot delegate or give someone else authority to make decisions about releasing funds.

If the will, trust document or court order gives you the authority to release some or all of the funds before the trust ends, you must ensure the funds are used for the purpose that you authorized the monies to be used.

If you are acting as trustee under section 178 of the Family Law Act, you must follow the Trustee Act when making decisions about releasing monies from the trust. If you are not sure if you have the authority to release funds, you should consult a lawyer.

As the trustee, you are personally responsible for any losses to the trust money due to improper management or unauthorized release of the trust funds or property.

### **Record keeping and accountability**

As trustee, you are accountable for the management of the trust funds. You must keep a record of all transactions. You should also keep financial statements to detail the income earned by the trust and any expenditures you authorize from the income or the capital of the trust.

You are required to account as per the Trustee Act. If you are an executor or trustee under a will, you have to present your first set of accounts to the court for “passing of the accounts” within 2 years from the date probate was granted. All future accounts have to be passed as the court directs.

Trustees can provide copies of their accounts to the beneficiary’s parents or guardians. Sharing the accounts with the parents/guardians may also help them prepare their child/youth to receive the money and/or property when the trust ends. If you are the parent/guardian and the trustee, you are not required to share the accounts with a third party but you are required to maintain detailed records and accounts.

If any person, including the beneficiary, has reason to believe that a trustee may not be managing the funds appropriately, they may contact the PGT. The PGT may investigate and may require the trustee to account to the PGT.

### **Termination of the trust**

As trustee, you have to hold the trust funds or property for the period stated in the will, trust document, court order or until the beneficiary reaches age 19.

You cannot end the trust early by paying the money to the parents or guardians. You also cannot appoint someone else to act in your place unless it states you can in the will or trust document. If you are not able to continue in your role as trustee, you may need to get an order from the Supreme Court of British Columbia to appoint a successor (or new) trustee. If you need to be discharged of your duties as a trustee, you should consult a lawyer.

When the trust is terminated, you have to provide a final accounting to the beneficiary. After the beneficiary has approved the accounts and released you as trustee, you may transfer the money to the beneficiary or to their legal representative. You should obtain confirmation that the funds were received by the beneficiary.

# Contact the Public Guardian and Trustee

## Child and Youth Services

700-808 West Hastings Street  
Vancouver, B.C. V6C 3L3

<b>Trust service phone</b>	604-775-3480
<b>Legal intake phone</b>	604-660-3040
<b>Fax</b>	604-775-2429
<b>Email</b>	CYS@trustee.bc.ca
<b>Website</b>	www.trustee.bc.ca

## Toll free calling

Toll free calling is available through Service BC.  
After dialing the appropriate number for your area (see below)  
request to be transferred to the Public Guardian and Trustee.

<b>Vancouver</b>	604-660-2421
<b>Victoria</b>	250-387-6121
<b>Other areas in B.C.</b>	1-800-663-7867

## PGT hours of operation

Monday to Friday 8:30am to 4:30pm