

focus on...

THE POWERS OF EXECUTORS

These notes seek to explain those powers which we normally insert in Wills prepared for our clients.

(a) To exercise the power of appropriation:

The Law provides that on death all of the deceased's assets should be sold and reduced into cash unless all the beneficiaries agree otherwise. The difficulty arises if a beneficiary will not agree with other beneficiaries or if one or more of those beneficiaries is under 18 for a minor does not have legal capacity to agree anything. In that event everything should be sold. The purpose of this clause is to give the Executors the power to decide not to sell. They may retain assets for the minor beneficiary and/or allow the other beneficiaries to take assets in specie.

(b) To apply income:

The Law provides that the income arising from investments held for a beneficiary who is not yet entitled to capital by reason of a greater age being provided for in the Will, must be handed over to that beneficiary once the age of 18 is attained. While under 18 the Trustees may normally use the income for the benefit of that minor beneficiary if reasonably required for the upkeep of that beneficiary. The clause we use entitles the Trustees to use that income for the benefit of the beneficiary if the Trustees think fit rather than having to justify whether their action is reasonable. For example, some may query whether it is reasonable for the child to have a private operation, to go on holiday or continue private education. Those may be desirable even though not necessary.

(c) To apply capital:

If the income is not sufficient to maintain a beneficiary the Trustees can normally break into the capital which that beneficiary hopes to receive on attaining the specified age; but limited to only one half of that capital, and also limited to what is reasonably required. This clause enables the Trustees to break into capital for the benefit of that beneficiary if they think that that is the right thing to do for that beneficiary. It also removes the limit of one half and enables the Trustees to use all of the capital if they think fit. For example, the Trustees may feel it appropriate to hand over the capital to a beneficiary who has not yet quite attained the specified age for the purpose of that beneficiary buying a dwelling.

(d) To invest:

Trustees do not wish to consider the implications of any restrictions there may be in the Trustee Act 2000. A power to invest enables the Trustees to lend the beneficiary a sum to enable that beneficiary to put down a deposit on a dwelling or even themselves to purchase a dwelling for the use of that beneficiary. It also allows the Trustees to use their stockbrokers or others as their nominees for this facilitates changes in investments, particularly in the new Crest settlement system.

(e) To Insure:

These notes relate only to the law in England and Wales. They are by no means exhaustive but we hope that they will help avoid some of the difficulties which may arise. Please raise above any queries as soon as possible.

focus on...

The rules relating to insurance can be extremely complicated. For example: do the Trustees need to obtain a professional valuation; do they pay the premiums out of income or capital; if the asset is destroyed do they have to replace it or can they take the insurance money; if the premiums are paid out of income does the insurance money thereby become income, or is it capital? This clause simply allows the Trustees to do what they think is sensible in all the circumstances.

(f) To appoint New Trustees:

In many cases a Trust may last for a good number of years, perhaps while a beneficiary or even the child of a present beneficiary attains 21. During that time there should be not less than 2 nor more than 4 Trustees. It is often difficult to find a member of the family or good friend who is able and willing to act as a Trustee. This clause entitles the Trustees to appoint a solicitor for normally a solicitor will not accept an appointment unless entitled to be paid for his services: we are, after all, professional trustees.

Richard Wilson & Co
Solicitors

Cymbal House, High Street, Goring on Thames RG8 9AU
Tel: 01491 879100 Fax: 01491 874187 web: <http://www.richard-wilson.co.uk>
July 2003