The STEP Provisions in your Will – 3rd Edition

Your draft Will contains reference to the 'Standard Provisions and all of the Special Provisions of the Society of Trust and Estate Practitioners (2nd Edition)'. These provisions are often referred to as the STEP Provisions. The STEP Provisions, whether standard or special, can be excluded from your Will, but we don't recommend this. This is because they are there to help ensure fairness to all parties who are dealing with/or benefitting from your Will.

If you would like us to provide you with a copy of the STEP Provisions, please let us know. Or, you can downland a copy from the STEP website at: www.step.org/step-standard-provisions.

Standard Provisions

All of the Standard Provisions apply in all cases where these provisions are incorporated, unless any particular provision is specifically excluded.

Provision 1: Incorporation of STEP Standard Provisions

This is self-explanatory – the words used to incorporate the STEP Standard Provisions identify which of the provisions apply – the Standard Provisions alone or together with some or all of the Special Provisions.

Provision 2: Interpretation

Provision 2.1: sets out definitions used in these provisions. It should be noted that 'Trustees' includes personal representatives as well as trustees; and 'Trust Property' includes property in a deceased's estate as well as property within a Trust.

Provision 2.2: provides that in the event of there being any conflict between these provisions and the terms of the will or trust instrument incorporating these provisions, the terms of the will or trust instrument prevail. For instance, if a trust instrument states that trustees may only invest in UK shares, Provision 4.1 of these provisions will not apply.

Provision 3: Protection for interest in possession trusts

This provision prevents the accidental loss of the inheritance tax advantages for interest in possession trusts, or deemed interest in possession trusts. This may be particularly relevant where, for example,

an 'immediate postdeath interest' arises under a will.

Provision 4: Additional powers

This provision provides Trustees with powers to assist them in managing a Trust Fund in the best way in the interests of the beneficiaries.

Provision 4.1: Investment

This provision gives Trustees a wide power of investment, and enables them to invest in land anywhere in the world, and in unsecured loans. This does not override the statutory duty: to invest in a manner appropriate to the circumstances of the Trust; to obtain advice when investing the Trust Fund; and to regularly review the trust investments and ensure they continue to be appropriate to the circumstances of the Trust.

Provision 4.2: Management

This provision enables Trustees to manage Trust Property without restriction. Where land is held it also permits Trustees to repair, maintain, develop or improve that land (and any building upon that land).

Provision 4.3: Joint property

This provision expressly permits Trustees to invest in property together with others and confirms that the general investment power in the Trustee Act 2000 which permits the purchase of property with others. For example, they may join with a beneficiary to buy a house for that beneficiary's occupation with the beneficiary contributing towards the purchase price or for example purchase a house for young beneficiaries jointly with someone else, such as their guardian(s).

Provision 4.4: Income and capital

This provision allows Trustees, should they think appropriate, to purchase wasting assets or assets which provide only a capital return, and to pay capital expenses out of income.

Provision 4.5: Accumulated income

Where income is accumulated under the terms of the Trust, this provision allows the Trustees to distribute that income at a future date.

Provision 4.6: Occupation or Use of Trust Property

This provision permits Trustees to acquire land anywhere in the world for occupation or use by an Income Beneficiary, subject to any terms imposed by the Trustees. Provision 4.6.3 specifically limits the power so as not to interfere with the rights that other beneficiaries might have.

Provision 4.7: Application of trust capital

This power is subject to the will or trust instrument authorising Trustees to give capital monies to an Income Beneficiary, and is limited to that part of the Trust Fund in which the Income Beneficiary's interest exists. It is a purely administrative provision, which sets out how Trustees can give capital to the Income Beneficiary, in addition to transferring Trust Property to them freed from the Trust.

Provision 4.8: Trade

This provision permits Trustees to carry on a trade, or executors to continue a trade in which the deceased was involved, in either case on their own or together with any other person.

Provision 4.9: Deposit of documents

Trustees do not need to keep all the trust documents in their personal possession, but can lodge them with a third party (e.g. a solicitor or accountant) for safe keeping.

Provision 4.10: Nominees

Trustees may arrange for Trust Property to be held in the name of a third party, rather than have it held in their own name(s). This may be beneficial especially if, for example, shares are held in nonpaper form.

Provision 4.11: Place of administration

This provision allows the Trustees to administer the Trust from outside of the UK, and will generally apply where the person creating the trust is resident outside of the UK, or all of the beneficiaries are outside of the UK. Trustees should only consider transferring the administration of a Trust outside of the UK after having taken specific legal and taxation advice.

Provision 4.12: Payment of tax

The payment of foreign taxes cannot normally be enforced in the UK. In some instances, the administration of a Trust can be frustrated if Trust Property is, or beneficiaries are, outside of the UK and the Trust cannot be properly administered unless taxes claimed by a foreign taxing authority are paid. This provision allows the Trustees to pay any such taxes notwithstanding that they are not legally enforceable against the Trustees.

Provision 4.13: Indemnities

This provision permits Trustees to reimburse third parties out of the Trust Fund in respect of any liabilities they incur and which would normally be payable out of the Trust Fund.

Provision 4.14: Security

The general law allows Trustees only a limited power to give security over Trust Property. This provision allows wide authority provided that it is exercised in respect of liabilities incurred by the Trustees in the proper exercise of their powers and duties. In particular, though, it does not enable Trustees to pledge Trust Property as security for a beneficiary's liabilities beyond the scope of Provision 4.7.

Provision 4.15: Appropriation

This provision removes the requirement for Trustees to obtain the consent of a beneficiary to Trust Property being appropriated to them in satisfaction of their interest in the Trust Fund. When exercising the power of appropriation, for the purpose of identifying the value being distributed to individual beneficiaries, trustees are required to value the Trust Property being appropriated as at the date of appropriation.

Provision 4.16: Receipt by charities, etc.

Provision 4.16.1 simplifies the ability to distribute Trust Property to a beneficiary which is not an individual such as: a trust, a company, an unincorporated association, or a charitable entity by providing that Trustees may safely accept the receipt of the person describing themselves as the treasurer (or financial controller) of that charity, unless they know that person is not authorised to receive the Trust Property. This does not override the ability of the Trustees to validly accept the receipt of the trustees of any such entity.

Provision 4.16.2 provides that where a charitable entity no longer exists (even in the same form as specified in the will or trust instrument) at the time that it would otherwise become absolutely entitled to Trust Property, the Trustees must decide to which charitable entity it should be paid. In making their decision, the Trustees must have regard to the purposes of the originally intended charitable entity.

Provision 4.17: Release of powers

This provision allows Trustees to extinguish any of the powers that they have. Such release must be by deed, which helps ensure that Trustees considering the release of powers are properly advised as to the consequences of their proposed action.

Provision 4.18: Ancillary powers

This provision is intended to prevent a narrow meaning being given to Trustees' powers, enabling Trustees to do things incidental to the terms of the Trust.

Provision 5: Minors and beneficiaries without capacity: powers over income and capital

This provision is merely administrative in nature, identifying how income or Trust Property to which a minor or a person lacking mental capacity may be dealt with.

Provision 5.1 identifies those persons who may validly give a receipt for any income or Trust Property due to a minor.

Provision 5.2 sets out ways in which the Trustees can apply income on behalf of a minor.

Provision 5.3 identifies those persons who may validly give a receipt for any income or Trust Property due to a person lacking mental capacity.

Provision 6: Disclaimer

This provision enables a beneficiary to refuse to accept their interest under a Trust, or a part of their interest without affecting their right to receive the rest of such interest. Where a beneficiary refuses to accept their interest (whether all or just part) the Trustees should consider taking legal advice to confirm that the way in which the beneficiary has refused acceptance is binding and, if so, who will then be entitled to the disclaimed interest.

Provision 7: Apportionment

This provision removes any residual duty on Trustees to split receipts and expenditure between income and capital.

Provision 8: Conflicts of interest

This provision sets out the procedure to be followed where there is a conflict between a person's duties to the Trust and their personal interests. Other than where the person in question was one of the Trustees originally appointed, or is the settlor exercising powers they reserved for themselves under the Trust, an Independent Trustee is required before any of the trust powers can validly be used to benefit the person in question.

Provision 8.1.2 excludes certain people from qualifying as an Independent Trustee.

Provision 9: Trustee remuneration

This provision provides for a professional trustee or a Trust Corporation to be paid for acting as 6 SSP3: OVERVIEW Trustee. This includes where services are provided by a partnership or LLP of which the professional trustee is a member.

Provision 9.2 defines a professional trustee by setting out the terms under which a Trustee acts in a professional capacity.

Provision 9.3 further provides that any Trustee is entitled to be paid for acting as a director or an officer of any company in which the Trust is invested.

Provision 10: Professional Trustees and Trust Corporations

This provision is supplemental to Provision 9 and authorises a professional trustee or a Trust Corporation to act as Trustee in accordance with its standard terms and conditions of service as published from time to time.

Provision 10.2 provides that in the event of there being any conflict between those terms and conditions, these provisions and the terms of the will or trust instrument incorporating these provisions, these provisions (subject to Provision 2.2) and the terms of the will or trust instrument prevail.

Provision 11: Liability of Trustees

Provision 11.1 provides that Trustees are not personally liable for any loss to the Trust Fund unless it can be shown that such loss arose from their own fraud or negligence.

However, Provision 11.2 provides that where a Trustee is a Lay Trustee (i.e. not a professional trustee or a Trust Corporation) they are not liable for any loss arising from their own negligence provided there is another trustee who is not a Lay Trustee.

Provision 11.3 authorises Trustees to act in accordance with the advice of a barrister of at least 5 years standing. This includes the ability to recover from the Trust Fund any expenses incurred when acting on such advice (including the costs of litigation without the need for authority from a court).

Provision 12: Subsequent editions of STEP Standard Provisions

This provision allows Trustees to adopt later versions of the STEP Standard

Provisions, thereby replacing all or some of these provisions. This provision does not allow Trustees to adopt any Special Provisions from a later version of the provisions unless such Special Provision is the same or broadly similar to a Special Provision already incorporated into the terms of the will or trust instrument.

Special Provisions

These Provisions further govern the way in which Trustees can act when dealing with your estate. They aim to ensure that the Trustees' powers are wide enough to enable them to deal with the estate without undue delay, or interference, but not so wide as to allow the Trustees to misuse the Trust Funds without recourse.

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Provision 13: Borrowing

This provision allows Trustees to borrow monies for investment or any other trust purpose. When entering into any borrowing arrangement the Trustees will need to be satisfied that the borrowing will benefit the Trust and can be repaid.

Provision 14: Delegation

This provision allows individual Trustees a wide power to delegate any of their trustee activities, including decision making, to a third party (which could include another trustee). The Trustee needs to be satisfied that whoever they appoint as their delegate is reasonably competent to deal with any of the matters delegated to them.

Provision 15: Companies

Provision 15.1 allows Trustees to start a company anywhere in the world, provided that it is for the benefit of the Trust.

Provision 15.2 allows Trustees to enter into a range of arrangements in relation to companies in which the Trust is invested, which may include take overs and the winding up of such companies.

Provision 15.3 relieves Trustees of a duty they would otherwise have to maintain oversight of companies, such as a family company, in which a Trust is invested. Where Trustees have their own nominee acting as a director or other officer of such a company, this provision may not apply. In any event, if the Trustees have knowledge of matters affecting the company, which give rise to concerns over the running of the company they may need to take action.

Provision 16: Powers of maintenance: Deferring income entitlement to age 25

This provision provides that where income due to a minor beneficiary is subject to s.31 Trustee Act 1925 (i.e. is to be accumulated or paid to them at the Trustees' discretion), that arrangement will continue until their 25th birthday rather than ending when they reach their

18th birthday. Trustees are able to change the arrangement, so that the beneficiary becomes entitled to be paid the income before age 25, so long as it cannot be paid to them before they are 18. If the beneficiary needs to reach an age of less than 25 to become entitled to capital of the Trust Fund, they will also be entitled to the income from that lesser age.

Provision 17: Absolute discretion clause

This provision allows Trustees to exercise their powers without the need to consult the beneficiaries.

Provision 18: Appointment and retirement of Trustees

Provision 18.1 allows a person to be appointed Trustee, even though they have no connection with the UK.

Provision 18.2 permits Trustees to retire even if such retirement leaves only one Trustee in place.

Provision 18.3 is a technical provision to enable the removal of a Trustee who lacks mental capacity, or to change Trustees where a person with power to appoint new Trustees lacks mental capacity. The requirement to obtain the permission of the Court of Protection in some cases is not affected.

Provision 19: Powers relating to income and capital

Provision 19.1 permits Trustees to invest and manage the Trust Fund to produce a higher level of income, or greater capital growth than would be normal for a trust fund, as they consider appropriate to the underlying purpose of the Trust. This includes the ability to agree to waive the payment of dividends, etc. from a family company.

Provision 19.2 permits Trustees to pay capital expenses, including tax liabilities out of income.

Provision 20: Relationships unknown to Trustees

This provision protects Trustees when making a distribution from a Trust Fund from claims by persons who purport to be beneficiaries and whose existence the Trustees have no knowledge of, or could not have become aware of despite making reasonable enquiries.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we’re always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don’t hesitate to get in touch. Roche Legal is an award-winning legal practice, offering practical and caring advice.