

# Becoming a Second Trustee - Guide

## Background | The Sale | Responsibilities

### Who can be a trustee?

The courts and tribunals consider that any person who is appointed a trustee of land should realise that in some cases this is a life-long appointment, and one of high trust and integrity. If you agree to being appointed as a second trustee we have a professional responsibility to be satisfied with your identity and character, so we may have to ask you to, for example, prove your identity to us, show your right to be in this country and your ability to deal with any issues that might arise regarding the property.

### Liabilities of trustees

Anyone who is a trustee of land or property has a number of statutory responsibilities. These include responsibilities to any tenants or occupiers in relation to the safety of the property (for example in relation to electrical, gas, asbestos and fire safety issues) and also in relation to insurance and keeping the property in good repair. A trustee also has similar liabilities to the 'beneficiaries' of the trust.

After you have been appointed as second trustee and until it is sold you will have to manage the property with the other co-owner and make sure that it is insured and maintained for the benefit of the beneficiaries of the trust. If you fail to do this you will again be potentially liable to them for any loss for breach of trust. For example, if you receive any part of the rents received, if the property is let, then the beneficiaries are entitled to this money, not you.



### Why am I being given this guide?

We are dealing with the sale of a property where one of the co-owners has died. We are acting for the surviving co-owner. The surviving co-owner is not entitled to all of the money from the sale as part of it will belong to the estate of the deceased co-owner. This is because the property was owned by the co-owners as 'tenants in common' (also known as 'owners in shares'). To allow the sale of the property to go through more quickly, the surviving owner has suggested that you agree to be appointed as the 'second trustee' so as to enable you to sign the transfer and agree to the sale of the land.

### Land owned by two or more trustees

To help you understand the background of this situation, where land is owned by two or more people (such as by a husband and wife) then it is legally held by them 'on trust' for themselves.

In such cases they own what is known as the 'legal estate' in the land as trustees for themselves, and their entitlement to the value of the property if it is sold is known as their 'beneficial interest' in the property, and they are the 'beneficiaries' under the 'trust'.

In some cases, the land is owned by them as 'joint tenants' and then if one of them dies then the deceased's share goes automatically to the other co-owner without the need to get a grant of probate or administration.

However, in other cases the property might be owned by them as 'owners in shares' (also known legally as 'tenants in common') and in that case if one of them dies their share doesn't go automatically to the other owner but might go (for example) to the deceased's children by a previous marriage under the terms of their Will.

In this guide the land we are dealing with is held by the survivor and the deceased co-owner as 'owners in shares' ('tenants in common').

### The sale of the property - two options

There are two ways in which the property can be sold in this scenario. The first one is that the property cannot be sold unless either probate or administration is granted to the deceased co-owner's estate, and the executor or administrator of the deceased's estate then signs the transfer (with the surviving co-owner) to transfer the property to the proposed buyer. This can take several months to obtain.



## Restrictions on the Title

In some cases the Land Registry will place what is known as a 'Restriction' on the title of the property. This will prevent the registered owner or owners from selling the property without complying with the requirements set out in the Restriction.

Restrictions are normally entered on the title where the registered owners hold the property on a trust of some sort. This might be, for example, where the property is owned by the registered owners as 'owners in shares', as discussed elsewhere in this note.

However, particularly where one owner has died, the Land Registry might remove the name of the deceased owner so that there is only one owner shown. However, the Land Registry will still leave the Restriction on the title to protect the beneficiaries of any trust that the remaining registered owner will continue to hold the property on trust for.

This will normally mean that the surviving owner cannot sell the property without complying with the restriction, which will usually mean that a second trustee has to be appointed.

## Be aware of disputes!

You should be aware that sometimes the registered owner may be in dispute with the beneficiaries of the estate of the deceased co-owner and you may become involved in litigation if this is the case.

This might arise, for example, where the surviving owner wants to keep all the money from the sale and not pay half of it to the children of the deceased co-owner in accordance with their Will. It would be sensible for you to satisfy yourself that you are a person who will be acceptable to the beneficiaries in such case and that the other co-owner is going to comply with their legal obligations.

However, the law says that, instead of waiting for this, the surviving co-owner can appoint someone to act as the 'second trustee' of the property to deal with the sale on behalf of the beneficiaries entitled to the proceeds of sale. If this is done, then the surviving owner and the second trustee can sign the transfer of the property to the buyers and give a valid receipt in law to the buyers for the purchase money paid. Doing this means that the buyers of the property will know that they do not have to be concerned about waiting for the grant of probate or administration to be issued for the deceased co-owner before they can complete the purchase of the property

You are being asked to read this guide as the surviving co-owner has suggested that you are appointed as a second trustee of the property being sold, so as to allow the sale of the property to go through more quickly.

## Responsibilities of a trustee

If you agree to be appointed as a second trustee you must realise that this comes with important liabilities and responsibilities to the 'beneficiaries' of the trust.

First of all, you must understand and accept that you are not entitled to any of the money from the sale.

If you did spend the proceeds of the sale, or gave away any of the money from the sale, then the beneficiaries would be able to claim this from you for 'breach of trust' and they would be able to sue you for the recovery of the money. You would also be committing a criminal offence and would be liable to prosecution.

Where one of the co-owners of the property has died, the money will be held by us until the grant of probate for the deceased has been legally issued. Once issued we will then pay the money to the 'Executor' or 'Administrators' of the deceased appointed by the probate, so they can pay it to the beneficiaries of the deceased co-owner, into an account they have set up to deal with Estate.

## Independent advice

Before you agree to be appointed as a second trustee, or if you have any queries about the contents of this note, we would urge you to consider getting independent legal advice from a solicitor or licensed conveyancer on your liabilities and duties as a trustee. If you are happy to be appointed a second trustee please sign this form below, and return it to us as soon as possible.

**I confirm that I agree to be appointed as a second trustee of the property known as**

..... (address of property)

**Signed** .....

**Please print your name here** .....