



TRUSTEES

FACILITY OWNING CLUBS:

Unless a club has chosen to become incorporated, it cannot hold property itself, since it does not have the necessary separate legal existence for that purpose.

Where a club wishes to obtain premises, whether freehold or leasehold, or to have property that is to be enjoyed jointly by the members, some persons must therefore accept responsibility for nominal (legal) ownership of the property, to be held on trust for the beneficial ownership of the members of the club as a whole.

It is for this purpose that trustees are appointed, usually under terms which oblige them to act promptly in accordance with the minuted directions of the committee. Any provision which does not require them to do so should be very carefully considered, since it may have the effect of removing effective control of the assets of the club from the elected committee to the non-elected trustees, leading to uncertainty and confusion.

We have produced a standard form of Deed of Appointment of Trustees for the holding of property. This document can be obtained via the Legal Department or downloaded from the Trustee section of the website. We have also produced a standard form of Deed of Appointment of Trustees for the ownership of a club boat.

There is no special qualification for a person to act as a trustee save that he should not be a minor and should be in full possession of his faculties.

Generally, not less than 2 and not more than 4 individuals should be appointed to act as trustees.

Appointment of trustees is made by members in general meeting or by the committee in accordance with the terms of the relevant rule in the club's constitution. There should be provision for trustees to resign, or be removed, and for new trustees to be appointed.

RETIREMENT AND APPOINTMENT OF NEW TRUSTEES:

Where new trustees are to be appointed, it will be necessary for the old trustees to transfer the property to the new trustees. If this is not done and the club wishes to sell, assign or sub-let the property

then the old trustees will first have to be traced in order that a valid transfer can be made.

We have produced a standard form of Deed of Retirement and Appointment of Trustees, relieving the old trustee(s) of their obligations under the Deed of Appointment and appointing a new trustee(s). This document can be obtained via the Legal Department or downloaded from the Trustee section of the website.

If the trustees hold leasehold or freehold property on behalf of the club then the old trustees may also need to execute a Deed of Assignment or Deed of Transfer, respectively, in order to effect the transfer of the property to the new trustees.

If a trustee dies in office then property held in trust simply vests in the surviving trustee(s). If the last surviving trustee dies in office then the property held in trust vests in their personal representative

LIMITING TRUSTEE LIABILITY:

- Where trustees hold assets on behalf of the club members generally they may incur liabilities, in their personal capacities, as legal owners of the property. They are not entitled, as of right, to an indemnity from the club members unless this is specifically provided for in the club rules. Model Rule 55 suggests an indemnity from the committee out of the assets of the club, which should be sufficient to cover any agreements into which the trustees may enter. It is up to the trustees to ensure they do not undertake obligations which the club funds may be insufficient to cover. Trustees may be personally liable if the assets of the club are not sufficient to meet the indemnity.
- It may be difficult to find club members willing to take on the potentially serious liabilities that can attach to trustees. Many landlords and other contractors are prepared to recognise this, and are willing to include in contracts, leases, etc a provision to the effect that the overall liability of the trustees arising out of any contract or other obligation undertaken by them on behalf of the club shall be limited to the assets of the club. The effect of this is to exonerate the trustees from personal liability for contracts which could otherwise put their personal assets at risk. Rule 46(b) of the model constitution deals with this question.
- In order to attract trustees, clubs may need to consider taking out an insurance policy to cover trustees' liabilities.

CONTACTS:

Gallagher Health Insurance Brokers (club and related insurance)
Tel: 01384 822222.

For more information kindly contact the RYA Legal Department on
0845 3450373 or legal@rya.org.uk

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The RYA Legal Department provides generic legal advice for its members, affiliated clubs and RTCs. This leaflet represents the RYA's interpretation of the law. It takes all reasonable care to ensure that the information contained in this leaflet is accurate. The RYA cannot accept responsibility for any errors or omissions contained in this leaflet, or for any loss caused or sustained by any person relying on it. Before taking any specific action based on the advice in this leaflet, members are advised to check the up to date position and take appropriate professional advice.

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