
I DECLARE that all income accruing wholly or partly before the date but received after the date when a beneficiary under my Will shall attain a vested interest in income shall not be apportioned but shall be applied as income received wholly after such attainment of a vested interest.

All the income due to a beneficiary shall be treated as having come after the beneficiary gained access to their inheritance.

I DECLARE that in any case where my Trustees have an obligation or discretion under the provisions of my Will or under the general law to pay or apply income or capital to a minor for his or her benefit my Trustees may discharge that obligation or exercise that discretion if they so desire by paying the same to any parent or guardian of the minor and their respective receipts shall be a sufficient discharge to my trustees who shall not be obliged to see the application of the income or capital so paid.

This deals with the transfer of funds on behalf of a minor. The Trustees only have to obtain a receipt for the money transferred to fulfil their obligations.

I DECLARE that my Trustees shall have power to insure against loss or damage by fire or from any other risk any property for the time being comprised in my estate to any amount and even though a person may be absolutely entitled to the property and to pay the insurance premium out of the income or capital of my estate or the property itself and any money received by my Trustees under such a policy shall be treated as if it were the proceeds of sale of the property insured

This covers that natural care that would be exercised as owners of a property.

*I DECLARE that my Trustees may treat as income all the income from any part of my estate whatsoever the period in respect of which it shall accrue and to disregard the Apportionment Acts 1834 and 1870 and any Acts replacing them and the rules of equity relating to the apportionments including those known as the rules in *Howe v Darthmouth* and *Allhusen v Whittell* in all their branches.*

This rules of apportionment of income in respect of trust funds is extremely complicated and expensive to administer. In virtually all cases it is advisable to use this clause which excludes these rules.

Every person who would otherwise benefit under this my Will but who fails to survive me for thirty clear days shall be treated for the purposes hereof and for the purposes of the devolution of my estate as having predeceased me and my estate and the intermediate income thereof shall devolve accordingly to the intent that no person shall be entitled to any intermediate income from my estate or any part of it if he or she dies within that period or acquire therein or in any part thereof a vested interest (or a vested interest subject to defeasance) before the end of it.

It is customary to make all distributions within a Will subject to the beneficiary surviving the Testator by '30 clear days'. This avoids the situation whereby an Executor would have to go through all the processes of administration only for the exercise to be repeated straight away. This is particularly important if the Estate is passing between spouses who may both be fatally injured in the accident. This clause reiterates this provision for all other beneficiaries.



Trustee Powers Explained

A Public Information Leaflet

1) Giving Control to Trustees

I GIVE DEVISE AND BEQUEATH all my real and personal estate of whatsoever nature and wheresoever situate (including any property over which I may have a general power of appointment or disposition by will) to my trustees upon trust to sell call in and convert the same into money with full power in their absolute and uncontrolled discretion to postpone such sale calling in and conversion for so long a period as they shall think fit without being responsible for loss.

This clause hands control of the Residual Estate to executors. This clause gives temporary Control to the trustees who can sell assets such as property, claim on insurances policies, transfer share ownership etc. IF NECESSARY. Note that the clause ends by saying that the trustees can '*postpone such sale.....for so long a period as they shall think fit.....*' The trustees are obliged to look after the estate for the beneficiaries and the real distribution of the estate is specified in the next clause in the Will.

2) Normal Trustee Powers

Executors and trustees need to be able to administer the Estate as the Testator would have wished. Acting in good faith they may need to invest money, pay for insurance's, allocate moneys to minor children, etc. without being questioned at every stage by potential beneficiaries trying to increase their final share.

I DECLARE that my trustees shall have the following powers in addition to their powers under the general law: (a) I declare that any money liable to be or required to be invested under this my Will may be invested in the purchase of or at interest upon the security of such stocks funds shares securities or other investments of whatsoever nature and wheresoever situate and whether involving liability or not upon such personal credit with or without security as my Trustees shall in their absolute discretion think fit to the intent that my Trustees shall have the same full unrestricted powers of investing and transposing investments in all respects as if they were absolutely entitled thereto beneficially.

(b) Without intending to derogate from the statutory powers of maintenance and advancement conferred by sections 31 and 32 of the trustee Act 1925 I declare that my trustees may at any time or times in their absolute discretion apply any part or parts of the capital (up to the whole extent) of a share or interest in my residuary estate of a beneficiary hereunder for the maintenance education advancement benefit or advantage in any such way as my Trustees shall think fit of such beneficiary.

(c) Whenever my trustees shall determine hereinunder to apply any income or capital for the maintenance support or benefit of any minor they may themselves apply that income or capital or pay the same to the parent or guardian of such minor without seeing the application thereof and without regard to the means of such parent or guardian or to the amount of any other income of such minor

(a) The ability to make investments is particularly important if the estate has to be looked after for any length of time e.g. when a main beneficiary is a child and it may be many years before they can inherit (age 18 in England and Wales)

If moneys from the estate were simply left on deposit, it could be argued that inflation, taking its toll, would reduce the value of the inheritance. The answer would be to allow the trustees to make prudent asset backed investments to maintain the real value of the funds. There would be a element of uncertainty about the returns and growth from stocks and shares, so this sub-clause absolves the Trustees from liability for this type of investment decision made in good faith. Obviously, faced with this situation all trustees should be consulted and probably a variety of professional advice should be sought.

(b) Once again if there is a delay before receiving an inheritance the Testator would have intended that any beneficiary who was a minor should benefit in terms of education and maintenance before reaching the age of majority. This sub clause allows for this.

(c) The trustees use income or capital from the estate to support a minor beneficiary. They need not follow up the actual use of the money. The decision to allocate money in this way should not be 'means tested'- it should be independent of any funds available to either the minor beneficiary or their parent or guardian.

The previous and following clauses supply the Trustees with a comprehensive range of powers. These may not all be applicable to a large number of clients but we cannot predict how testators fortunes may change between the time of writing the Will and the Executor being called upon to prove it. There is no reason why these cannot be included in all Wills.

3) Additional Trustee Powers

I DECLARE that my trustees may exercise the power of appropriation conferred by section 41 of the administration of estates Act 1925 without obtaining any of the consents required by that section and even though he or she or they may be beneficially interested in the property appropriated

Sometimes a beneficiary may wish to exchange a legacy of money for a personal item - a clock, painting etc. This allows the Trustees to arrange such substitutions.

I DIRECT that all interest dividends and other payments in the nature of income arising from my estate and received after my death shall be treated as accruing wholly after my death and shall not be apportioned

Any income produced by estate e.g. dividends from shares that are received AFTER the testator has died shall be deemed to have been produced after his death. This could be advantageous in terms of Income Tax owed by the Testator.