



FREEMASONS

New Zealand

Guidance for Trustees

What does a Trustee need to know?

This explanatory note is directed at providing some high-level commentary to assist lodges and trustees to better understand the role and risks of a lodge trustee. As every lodge operates in a different way, these comments have to be general in nature but if lodges have specific questions or issues, then see below.

WHAT IS A LODGE?

'A Lodge' is defined in the Book of Constitution as "...a Lodge for the time being holding a Charter under the hand of the Grand Master and the Seal of Grand Lodge...". It is the Charter that constitutes the brethren when congregated for specific purposes into a 'Lodge' and defines exactly what it is and the laws and rules it is to obey.¹

Lodge Assets

Many lodges own assets – some 'cash in the bank', others land and buildings. Most lodges have an income – dues from members; interest; some have outside sources of income from investments or fund-raising activities. These operations are usually conducted in the name of the lodge.

WHAT IS TRUSTEE?

A trustee is a person (or group of persons or a corporate entity) who holds real or personal property, for and on behalf of others (the beneficiaries) and in the case of a craft lodge to hold "...all lands and any estate therein, and all money and securities for money, and all personal property then held by the lodge."

Appointment of Trustees

Lodges adopt the Grand Lodge of Freemasons of New Zealand Trustees Act 1903.² They then appoint lodge trustees who hold the assets of the lodge for and on behalf of the lodge.

Lodge by-laws and the Book of Constitution contain rules as to how the trustees are to operate.

1 The wording used in the Charter is Form 2 in the Book of Constitution

2 A copy of the Act is in the Book of Constitution following the Forms Section.

Lodges resolve to appoint their trustees and notify the Grand Secretary who maintains a register of trustees in terms of the Act. A lodge can replace trustees from time to time in terms of its by-laws.

As lodge trustees change from time to time, the Grand Secretary records the changes in the register but there is no other legal requirement for the changes to be recorded.

WHO IS INVOLVED?

The main parties to the lodge trust are:

The trustees

A lodge normally has five trustees. They should be people whom the lodge is confident will manage the trust property and prudently. One of the matters to look at when choosing trustees is how the trust is to be managed, and then selecting trustees with the abilities and skills to act appropriately.

We are past the days of appointing the oldest or most senior freemason as a lodge trustee simply to mark the esteem and respect in which he is held. In today's environment, the demand on trustees is ever increasing, and there are alternative ways to reflect the respect we hold for our senior members.

The beneficiaries

There are generally two types of beneficiaries – the lodge and its members are the immediate beneficiaries, but once the lodge ceases to exist, then the provisions in the Book of Constitution relating to lodge dissolutions apply.

and a Scheme of Distribution is agreed. Then the beneficiaries become those people detailed in the Scheme of Distribution.

HOW DOES A TRUST OPERATE?

Trustees are the owners of the property and can do the same sorts of things with the property that owners can do. They can hold property, raise mortgages, hold bank accounts, and generally hold all types of assets and investments as long as they operate according to the powers set out in the lodge by-laws.

Often the by-laws are silent, in which case what happens?

Trusts are covered by The Trust Act 2019. The Trust Act imposes duties upon the Trustees which cannot be excluded by the Book of Constitution or the Lodge By-laws.

Do the trustees make their own mind up (what are called 'active' trustees) or are they obliged to follow whatever decision is made by the brethren in the lodge (in which case they are called 'bare' trustees – meaning they exercise no independent thought but blindly obey the directions of their lodge).

Normally the By-laws will state the Trustees will follow the direction of the Lodge. However, in doing so the Lodge Trustees may refuse if following the direction of the Lodge would breach their statutory duties as Trustees.

BEING A TRUSTEE

The following paragraphs provide some guidance around the role of a trustee. These are duties imposed by the Trust Act 2019.

Duties of a Trustee

Mandatory Duties

1. To know the terms of the trust
2. To act in accordance with the terms of the trust
3. To act honestly and in good faith
4. To act for the benefit of the beneficiaries or to further the permitted purpose of the trust

Default duties – these apply unless varied by the By-Laws.

5. General duty of care
6. To invest prudently
7. Not to exercise power for their own benefit
8. To consider the exercise of their power
9. Not to bind or commit trustees to future exercise of discretion

10. duty to avoid conflict of interest

11. Duty of impartiality

12. Duty not to profit

13. Duty to act for no reward

14. Duty to act unanimously

Also, a Mandatory duty to

The duty to keep core documents including all meeting and accounting documents responsibility is ultimately the trustees, not the secretary or treasurer.

As a trustee you are also responsible for

- The preservation of the lodge assets
- At the very least avoiding or minimizing losses in those assets
- The timely payment of any debts owed or incurred by the lodge.

Trustees' personal liability

It is important to note that the Lodge Trustees by the Trust Act cannot be indemnified by the Lodge for a trustee's dishonesty, willful misconduct, or gross negligence. If the Trustees do any of these three, they will be personally liable.

Gross negligence is defined as unreasonable conduct such that no reasonable trustee in that trustee's position would have considered that conduct.

WHAT ABOUT TAX?

Generally, the income received by any trust is taxable. However, lodge dues are not regarded as taxable income. A modest allowance for interest earned on bank deposits and the like can be obtained from the IRD. You can check if you already have the IRD exemption using the IRD's RWT Exemption Register (Resident withholding tax exemption register on the ird.govt.nz website) using your lodge's IRD number. If you do not have an IRD number or an exemption, then resident withholding tax will be payable on interest earned.

If lodges derive income from other activities (rent, investments, fund-raising...) then a tax return (IR9) is likely to need filing and tax could well be payable to some degree, and professional advice is needed.

If the income from certain other activities (for example rental) and from lodge dues is greater than \$60,000 per annum, the lodge must register for GST.

The Inland Revenue Department will consider that the 'taxpayer' whom we would call 'the lodge' is in fact the individual trustees of the lodge. So, for example, if a lodge has failed to declare taxable income for a number of years and IRD investigate, then it is the lodge trustees who will be first in line to put right the failure and if that involves payment of tax arrears, interest and penalties, then it is the lodge trustees who must meet those costs.

The lodge trustees may be able to (subject to restrictions in the Trust Act 2019 for example no indemnity for Gross negligence) seek reimbursement from the lodge, but if it did not have the resources to meet those expenses, then the lodge trustees must do so from their personal resources.

Would the other brethren contribute – you would certainly expect them to, however in a worst-case scenario the trustees themselves face the personal responsibility of making good the shortfall.

To minimize the personal liability of lodge trustees, some lodges have set up companies to own lodge buildings and the like. Other lodges have set up formal charitable trusts and have their investment assets held under a formal trust deed. These can be prudent vehicles to use, but they too demand professional management, proper compliance with regulatory regimes, complete financial recording systems and reporting mechanisms.

To assist Grand Lodge with ensuring Lodges are complying with their tax obligations it is important that masonic entities send their accounts to the Grand Secretary in accordance with the requirements in the Book of Constitution section 100(d).

DO THE RIGHT THING – GET PROFESSIONAL ADVICE

Lawyers and accountants deal with many personal, family, business and property matter and transactions. Some are not fully acquainted with the finer points of freemasonry and may not know about the either the Grand Lodge of Freemasons of New Zealand Trustees Act 1903 or the Trust Act 2019. However, they are able to give guidance on any issues lodge trustees may have affecting their roles and responsibilities.

It is better to get professional advice than rely on anecdotal stories of yesteryear. The climate in which we operate today is getting more and more regulated and there is a heightened need for diligence and application.

If your lawyer can't help you with a particular matter, you may wish to approach Grand Lodge office for assistance to obtain the appropriate independent advice. Either way, getting good advice before a problem gets too big can save you anxiety and money. However, note that by the Rulings of the Board 72 and 73 the Grand Registrar and Grand Treasurer provide advice only to Grand Lodge

Need to Manage Problems

A trustee should not ignore issues as they won't go away. A trustee should make a plan to deal with them and, as noted above, seek advice and assistance. Once the advice is obtained a trustee should not ignore it. Timely, accurate and efficient intervention will prevent situations from deteriorating beyond the Lodges ability to rectify them.



“I have been appointed a Trustee of my Lodge, and am honored to contribute. But, where do I find out what I am meant to do, and do I have any liability if it all goes wrong?”

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