

TRUSTEES: WHAT IS A LIEN?

Trusts in 2 Minutes
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What is a lien?

A right to keep possession of property belonging to another person until a debt owed by that person is discharged.

A trustee has the right to be indemnified against proper trust expenses out of the assets of the trust.

A trustee has a lien over the trust fund to secure their right to be indemnified.

When it is important?

In the event of:

- An appointment to a beneficiary
- A change in trustee
- An insolvent trust
- Contingent liabilities arising

Trustees Rights

- Reimbursement of costs
- Exoneration for any liabilities
- Realisation of assets
- Retention of trust fund

Important considerations

When a trustee enters into a contract with a third party it is personally liable on that contract unless it contains a term that excludes personal liability.

Where a trustee decides to retain trust assets, it is advisable that they record the exact terms and conditions on which they retain those assets, for the benefit of all parties.

A trustee is not automatically entitled to retain the whole trust fund. If the maximum liability is known, a trustee can retain that maximum amount; if the maximum liability is unknown, a trustee should retain enough to cover an amount calculated on reasonable assumptions.

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