



TRUSTEES NEED TO KNOW: REMOVAL OF TRUSTEES

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How can a trustee be removed?

The most straightforward way to remove a trustee is to rely on an express power in the trust deed.

The Trust of Land and Appointment of Trustees Act 1996 allows beneficiaries, who are of full age and capacity and who are absolutely entitled to the property subject to the trust, to unanimously agree to replace a trustee. The power is only available in the instance that there is no provision in the trust instrument to appoint other trustees and the power under the Act is not excluded in the trust instrument.

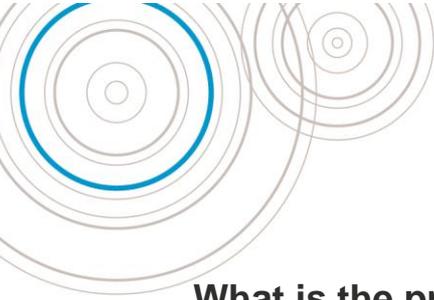
The last resort is to look to the court to remove a trustee either by statutory power pursuant to s41 of the Trustee Act 1925 or under its inherent jurisdiction.

Are there any other circumstances in which a trustee can be replaced without court intervention?

Section 36 of The Trustee Act 1925 provides that if a trustee is “*dead or remains out of the United Kingdom for more than 12 months, or desires to be discharged from all of any of the trust or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is an infant*” they may be replaced by another trustee (subject to restrictions). Some of these grounds are far more difficult to show than others, in particular that a trustee is “*unfit*” or “*incapable*”.

On what basis would the court remove a trustee?

The court’s main guide is the welfare of the beneficiaries and in instances of serious misconduct the decision to remove a trustee is likely to be straightforward. However, in all other instances it is less clear cut. For example, friction or hostility between the trustee and the beneficiaries is not, of itself, enough to have a trustee removed.



What is the process when a new trustee is appointed?

The trust assets need to be vested in the new trustee. This is the process of transferring the legal ownership. With some assets it is automatic but in some instances it may be necessary to apply for a vesting order from the court.

Section 37(1)(d) of the Trustee Act 1925 provides that in the instance of the appointment of a trustee for the whole or any part of the trust property “*any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done*”.

What if the trust owes the departing trustee money?

It is well established that the departing trustee is entitled to retain assets until any liabilities properly incurred as a trustee have been paid. If there is insufficient trust money available to satisfy the amount owed to the departing trustee, he or she has an equitable lien and is able to ask the court to make an order for the sale of sufficient trust assets to discharge that amount.

How can we help?

We act for trustees, executors, personal representatives and for individuals claiming against estates, trustees or other parties. We also often advise on complex and cross-jurisdictional issues, and regularly work alongside other intermediaries based offshore. Our team is recognised for our expertise in this field by the legal directories: The Legal 500 and Chambers & Partners.

If you have any questions arising from this ‘Need to Know’ please do not hesitate to contact our Wills, Trusts and Inheritance Disputes Team:

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This **Need to Know** provides general guidance of the law in this area at the date of publication. Specialist advice should also be sought.