

Court Rejects Trust Modification to Add a Removal Provision

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It is becoming increasingly common for beneficiaries to want to create a power to remove trustees of their trusts, when the trust agreement does not grant them this power.

In states which have adopted it, the Uniform Trust Code does grant a statutory power of removal to the trust beneficiaries, even when the governing trust document does not bestow such removal power itself. However, such statutory powers generally require court approval and compliance with certain criteria.

In Kentucky, KRS 386B.7-060(2)(d) permits the Court to remove a trustee only (i) if there has been a substantial change of circumstances or removal is requested by all the qualified beneficiaries, (ii) the Court finds the removal of the trustee best serves the interests of all the beneficiaries and is not inconsistent with a material purpose of the trust, and (iii) a suitable trustee or co-trustee is available.

In a recent Pennsylvania decision, *TUA of Taylor*, 164 A.3d 1147 (Pa. 2017) the beneficiaries sought to add a trustee removal clause to their trust agreement. Specifically, they wanted to add a trustee removal clause that would allow the beneficiaries to remove and replace the trustee in the beneficiaries' discretion, without cause and without court involvement. The bank trustee, Wells Fargo, opposed the modification, arguing that the trustee removal provision in the Uniform Trust Code ("UTC") provided the exclusive method for removal of a trustee in that state. Under the state trustee removal statute, as in Kentucky, the removal of the trustee was not allowed merely by the consent of all the beneficiaries.

The Court sided with the corporate trustee, finding that the trustee removal statute in the UTC was the exclusive provision on removal of trustees. The Court carefully considered the two trust statutes relevant to the situation, one allowing modifications of the trust, and the other allowing the removal of trustees. The Court found that there was no language in the Uniform Trust Code indicating whether the modification statute could be utilized to modify or replace the statutory trustee removal process. The Court found that the trustee removal statute in the UTC sets forth a process to be administered by the Court which considers various factors, including whether the removal serves the best interests of the trust beneficiaries, whether the removal is not inconsistent with a material purpose of the trust, and whether the beneficiaries have identified a suitable trustee. The Court also duly noted the long history in Pennsylvania of the Court strictly limiting the removal and replacement of trustees to circumstances in which the Court determined a good cause exists to do so. The Court also relied upon the Official Comment to the UTC, indicating that the trustee removal provision was intended to be the exclusive process for governing the removal of trustees.

This is but the latest decision in a line of cases from various states addressing the issues created by the interplay of the various provisions within the UTC. Doubtless, there will be more going forward. However, in this regard, the Court did take note that two states, Iowa and Ohio, had modified their UTC provisions to make it clear that the trust modification provision could not be used to modify the trustee removal process. Perhaps other jurisdictions will follow suit in the future.

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