

How to remove trustees from a business trust

By [Charles de Meillon](#)

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Trusts have been used for many years to protect the assets of their beneficiaries - a legal arrangement designed to hold and manage assets overseen by appointed trustees. A business trust requires that a trustee does more than just protect and administer the trust property and requires that they also use these assets to further the aims of the trust, generate a profit and provide additional benefit to the beneficiaries. But what happens when trust issues arise?



Charles de Meillon

There may come a time where beneficiaries believe that a trustee/trustees, for various reasons, are not fulfilling their fiduciary duties. It is important to look at the trust deed first to establish if exit strategies have been put in place but where serious disputes do arise and settlement negotiations fail or where a trustee refuses to resign, there may be no other alternative than the forcible removal of the trustee.

There are several remedies for removing trustees from a business trust, assuming they fall within the regulations contained in the Trust Property Control Act 57 of 1988 and that the removal of trustee(s) will ultimately be in the best interests of the trust and its beneficiaries.

In terms of the Act, Section 20 provides that a trustee may be removed by a competent court on application by the Master of the High Court or another person who has a vested interest in the trust property (i.e. a beneficiary) if any of the following circumstances are present:

- If the trustee fails to perform satisfactorily any duty imposed upon him/her by or under this Act or comply with any lawful request by the Master,
- if the trustee has been convicted in the Republic or elsewhere of any offence of which dishonesty is an element or of any other offence for which he/she has been sentenced to imprisonment without the option of a fine,
 - the above embodies similar requirements for the removal of a director of a company in terms of the 2008

Companies Act,

- if the trustee fails to give security or additional security, to the satisfaction of the Master within two months after having been requested or within such further period as is allowed by the Master, or
- upon sequestration or liquidation of their estate of the trustee,
- if the trustee has been declared to be mentally ill or incapable of managing his/her own affairs or if, by virtue of the Mental Health Act, 1973 (Act No. 18 of 1973), is detained as a patient in an institution,
- if the best interests of the trust and its beneficiaries have not been met.

Further to these statutory requirements, the trust deed can stipulate other, more stringent conditions or circumstances where a trustee may be removed and it is therefore important when creating a trust to consider a wide variety of potential solutions that are available to protect the beneficiaries and the ability of the trust to give effect to its purpose. It would also be wise to include a dispute resolution mechanism i.e. mediation / arbitration in the trust deed that disaffected parties can rely on.

It's advisable to seek legal advice when preparing your trust deed and certainly before pursuing any action to initiate the removal of trustees.

ABOUT THE AUTHOR

Charles de Meillon, candidate attorney at boutique commercial law firm Gillan & Veldhuizen Inc.

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