

Practical Probate: Fiduciaries Part 2

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In my first article on fiduciaries, I explained the role of executors and administrators in decedent's estates. This next article in the Fiduciaries series examines situations that may require a court to remove a fiduciary under Connecticut law.

One such situation is where the fiduciary (trustee, executor, administrator, guardian, conservator or agent under a power of attorney) is no longer capable of performing their job, or simply stops doing what is required. There can be a number of reasons for this. Perhaps the fiduciary has a serious illness that prevents them from performing their fiduciary duties. Maybe the circumstances of the fiduciary have changed (caring for an ill family member, a change in jobs, moving to a distant state or even another country) that have made it difficult or impossible for the fiduciary to do their job. I've also seen situations where the fiduciary simply becomes unresponsive for unknown reasons and doesn't communicate with the parties or the court. All of these may require the fiduciary to be removed and replaced.

Some trusts – notably but not exclusively irrevocable living trusts – commonly give one trustee the authority to replace the independent trustee.

Another reason why a fiduciary may be removed is if they waste the estate.

Almost all fiduciaries are responsible for assets. There are many scenarios where a fiduciary could illegally waste the estate. For example, if they use some or all of the estate for their own enrichment, make poor investment decisions, fail to follow the requirements of the will or trust that governs the estate, or fail to properly safeguard the assets in their charge (perhaps they've failed to properly insure real property that subsequently is damaged or destroyed).

Failure to furnish a court-ordered bond is another reason for a fiduciary to be removed. A bond is similar to an insurance policy that protects heirs, beneficiaries and creditors of an estate. If the fiduciary wastes an estate for which there's a bond, the parties may be made whole by the surety (usually the insurance company that issues the bond) for losses due to the fiduciary's mismanagement.

Another situation where a fiduciary may be removed is where there are 2 or more fiduciaries, and they are not cooperating with each other. If the lack of cooperation "substantially impairs the administration of the estate" a court may remove one or more of the fiduciaries. Generally in such a situation, the conflict among the fiduciaries causes even the simplest fiduciary functions to take an unreasonably long time to the

detriment of the parties and the estate.

In 15 years on the bench, I've seen a lot of conflict among parties who appear before me. It's important that parties put their differences aside to get the work at hand done. This can be particularly challenging when the parties in conflict are fiduciaries. For that reason, Connecticut law recognizes the gravity of those situations and gives courts the ability to remove fiduciaries.

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