

For: LeClairRyan, Williamsburg, Va.
From: Parness & Associates, Aberdeen, N.J.

FOR IMMEDIATE RELEASE

Removing a Trustee May Be Complicated, But Not Impossible, Says LeClairRyan Attorney
Court safeguards help protect all parties, advises Will Sleeth in recent blog post

WILLIAMSBURG, Va. (6/2/17)— Removing the trustee of a trust is an unpleasant but sometimes necessary task, says Will Sleeth, a partner in national law firm LeClairRyan's Williamsburg office and leader of the firm's Estate and Trust Litigation team. It is not something to be approached lightly and may not be easily accomplished; but a court may permit it if the request is reasonable and is accompanied by sufficient documentation, he adds.

First, the terms of the trust itself may provide procedures for removal. "Oftentimes, comprehensively-drafted trust instruments will contain specific procedures whereby beneficiaries or a beneficiary may remove a trustee," Sleeth writes in a recent blog, [Trustee Removal Lawsuits: An Overview](#). His post appears in the firm's [Estate Conflicts](#) blog, which focuses on disputes involving wills, trusts, guardianships, and celebrity estates. "Those procedures could require a specific reason for the trustee removal—such as misconduct on the part of the trustee—or no reason at all. Additionally, the trust may provide that a certain number of beneficiaries need to consent to the removal, such as all of the beneficiaries, or a majority."

A trust may also provide for a trust protector—or a third party who holds certain authority with respect to the terms of the trust or the actions of a trustee—to remove the trustee. "Estate planners are increasingly utilizing trust protectors in the trusts that they draft, so it's likely that in the future we'll see greater use of provisions granting trust protectors the authority to remove the trustee," Sleeth adds.

In some cases, a beneficiary can seek to utilize the provisions of state law to file a lawsuit seeking the removal. In fact, many states have adopted, with some modifications, the Uniform Trust Code, which spells out certain grounds upon which a trust beneficiary can seek the removal of a trustee. Those grounds can include "a serious breach of trust by the trustee; or lack of cooperation among co-trustees that substantially impairs the administration of the trust," Sleeth relates.

In one high-profile case, billionaire Donald Sterling sued when his estranged wife removed him from a family trust that owned the Los Angeles Clippers, and sold the basketball team to former Microsoft CEO Steve Ballmer. Although Sterling and his wife were the sole trustees—and California's Probate Code says that when two co-trustees serve, their actions must be unanimous—California's Court of Appeal ultimately ruled that Donald's forced exit was valid.

"In the case of Donald Sterling, the Court of Appeal said it was justified due to his mental condition, among other issues," according to Sleeth. "But as we've seen, there could be several ways of removing a trustee."

The most common reasons to seek removal are the trustee's theft or misuse or waste of trust assets; the trustee's abuse—whether verbal or physical—of beneficiaries or a co-trustee; the trustee's threats towards a beneficiary or co-trustee; and laziness or non-responsiveness on the part of the trustee, he notes.

But even if a trustee has committed what appears to be clear misconduct, some judges will refrain from removing him or her, Sleeth says. Instead, in order to maintain a degree of "control" over the trustee, the judge may order the individual to remedy a wrong, such as putting back money into the trust.

Besides maintaining a greater degree of control over the person, this ensures that remedial trust-related transactions can be accomplished more quickly and easily. This is especially important if the trustee's name is on the trust checking accounts, signature cards and other documents, Sleeth says.

“Attempting to remove a trustee is not an easy matter, and beneficiaries or other parties should carefully consider the situation and speak with their legal and other advisors before taking such a step,” Sleeth advises. “But as Donald Sterling and other trustees have discovered, there are procedures in place for removing a trustee when the circumstances warrant it.”

About LeClairRyan

As a trusted advisor, LeClairRyan provides business counsel and client representation in corporate law and litigation. In this role, the firm applies its knowledge, insight and skill to help clients achieve their business objectives while managing and minimizing their legal risks, difficulties and expenses. With offices from coast to coast, the firm represents a wide variety of clients nationwide. For more information about LeClairRyan, visit www.leclairryan.com.

###

Press Contacts: At Parness & Associates Public Relations, Bill Parness, (732) 290-0121, bparness@parnesspr.com or Lisa Kreda, lkreda@parnesspr.com