

Under Missouri Law, Corporate Trustees are Easily Ousted

AUTHOR: BHAVIK PATEL

Historically, Missouri trust law prevented beneficiaries of a trust from replacing a trustee absent a showing that the trustee had committed a breach of trust. This law tended to insulate investors administering trusts from competition. Even if beneficiaries were dissatisfied with a corporate trustee who obtained average returns and charged high fees, they could not replace the trustee without proving misconduct. However, Missouri's trust law has expanded beneficiaries' power to remove trustees, so Missouri corporate trustees may soon face a more competitive environment.

When Can Trustees be Replaced?

In 2004, Missouri adopted the Uniform Trust Code (MUTC), which allows beneficiaries to petition the courts to replace trustees who have not committed a breach of trust but fail to meet expectations. The MUTC allows trustees to be removed for failure to provide a steady level of services to the trust, failure to administer the trust effectively, or an inability to work effectively with co-trustees.

Even more noteworthy is the MUTC's no-fault removal provision, which provides an avenue for beneficiaries to replace trustees who are competent but simply charge too much. This provision allows courts to replace a trustee without any showing of misconduct or poor performance. Trustees can be removed when the beneficiaries request it so long as removal is not inconsistent with the trust's purpose and in the beneficiaries' interest, and a suitable replacement trustee is available. The no-fault removal provision has already been used to replace a trustee with a lower-charging competitor. Other provisions which give the courts broad discretion to modify trusts may also enable beneficiaries to replace trustees who charge high fees without any showing of fault.

When Can Beneficiaries Dissolve a Trust?

The MUTC not only allows beneficiaries to replace trustees they don't like, it also dramatically expands their ability to terminate trusts altogether. As with removal of trustees, beneficiaries can now succeed in terminating a trust without any showing of fault by the trustee. Missouri courts may now terminate a trust if they find that termination would better serve the trust's purpose. They may also terminate trusts when all adult beneficiaries consent to it. Like the removal provisions, beneficiaries' increased ability to terminate trusts can be used to get rid of trustees who charge too much in administrative fees

A Changing Environment

The MUTC's removal provisions have the potential to make trust management an increasingly competitive enterprise as savvy beneficiaries and trust managers begin to exploit them. If corporate trustees do not take measures to protect their interests, they may find their trusteeships pirated away by competitors promising better performance and lower costs of administration, or terminated altogether.