

# Have you provided for the removal of a trustee in your estate plan?

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When drafting an estate plan, it's critical to select the right trustee to carry out your wishes and protect your beneficiaries. In addition, it's important to establish procedures for removing a trustee if circumstances change.

Failing to do so doesn't mean your beneficiaries will be stuck with an inadequate trustee. But they'll have to petition a court to remove the trustee for cause, which can be an expensive, time-consuming and uncertain process. Making the process more onerous is the fact that courts generally are reluctant to remove a trustee who was hand-picked by the trust creator.

## Reasons for removing a trustee

Grounds for removing a trustee vary according to state law, but typically include:

- Conflicts of interest or lack of cooperation with beneficiaries;
- Insolvency or bankruptcy (if it would jeopardize trust administration);
- Mismanagement, fraud or other misconduct;
- Declining or poor health; or
- Legal incapacity.

To avoid the need for court intervention, include procedures for removing a trustee in your trust agreement. You might allow beneficiaries to remove a trustee without cause if they're dissatisfied with his or her performance. Or you might provide for removal of a trustee under specific circumstances defined in the trust agreement.

## Provide a list of successor trustees

Furthermore, your trust agreement should include a list of successor trustees. If one trustee is removed, the next person on your list becomes the new trustee. Another option is to appoint a trust protector — someone empowered to make certain decisions, including firing a trustee and appointing a new one. If you have questions regarding trustees, please contact us.

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