



REMOVING EXECUTOR OF A WILL

**Trusts in 2 Minutes
October 2021**



Why remove an Executor?

Examples include:

- Misconduct;
- Acts or omissions which endanger estate property;
- Conflict of interests;
- Inactivity; or
- Loss of trust and confidence between Executor and beneficiaries.



How do I remove an Executor?

There are two key ways to remove an Executor:

- Voluntary resignation; or
- Court.



Resignation

- A beneficiary may ask an Executor to resign from his office and be replaced but it is not guaranteed that he will.
- Mere discontent or hostility will not be sufficient.
- It is entirely up to the Executor but if a Court application for removal would likely succeed, they may consider resignation.

Court - Power

Section 8 Administration of Estates Act 1990

- Executor may be appointed in substitute of an existing Executor at the discretion of the Court. Or if more than 2 Court may terminate the appointment of one or more.
- Application may be made by personal representative of deceased or a beneficiary of the Estate.
- Beneficiary includes a person under a Will or under the intestacy provisions who has an interest in the Estate.

Court - Considerations

Re Corkill (Deceased) 2014 MLR 345

- High bar to pass in order for Court to exercise its discretion to remove an Executor.
- Hostility between the Executor and beneficiaries is insufficient.
- Court's main consideration will be the welfare of the beneficiaries.

Court - Considerations

- Additional cost to be incurred by Estate in new appointment.
- Whether the beneficiaries have trust and confidence in the Executor and their administration of the Estate.
- Acts or omissions which endanger property or show want of honesty, reasonable fidelity or proper capacity usually required.
- Court will consider views of Testator and whether they wished the Executor to be appointed.

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