

## Removing Personal Representatives

What can a beneficiary do if they are to benefit from the estate of a deceased person but have concerns about the administration of the estate by the Executors or Administrators ("Personal Representatives")? How can they ensure that the legacy is protected if the relationship with the Personal Representatives breaks down?

Personal Representatives have an overriding duty to collect in the estate of the deceased and administer it correctly: section 25 of the Administration of Estates Act 1925.

If a beneficiary believes that an estate is not being properly administered then it is possible to apply to the High Court for the court to exercise its discretion and to remove or substitute one or more of the Personal Representatives. This is pursuant to section 50 of the Administration of Justice Act 1985 ("AJA").

An application under the AJA must be made to the Chancery Division of the High Court and can be made by a beneficiary of the estate or an existing Personal Representative. Any proposed substitute Personal Representatives must be shown to be appropriate and must consent to the appointment.

But the Court has a discretion as to whether or not Personal Representatives should be removed and often the Personal Representatives themselves object. How is the discretion exercised?

Helpfully three cases were heard in 2010 on the point as prior to this, little guidance had been available as to how the court would exercise its discretion.

### Angus v Emmott [2010]

This case highlighted that while friction or hostility between Personal Representatives and beneficiaries is a relevant consideration, it is not of itself, a reason for the removal of Personal Representatives. Only when the proper administration of the estate or the welfare of the beneficiaries is being adversely affected, will removal be considered.

In this case the degree of animosity and distrust between the Personal Representatives was such that it was considered unlikely that the due administration of the estate could be "*achieved expeditiously in the interests of the beneficiaries unless some change is made.*" (Mr Phillip Snowden QC, sitting as a Deputy Judge of the High Court). The judge decided that all 3 Personal Representatives should be removed and replaced with an independent professional executor to act as their substitute.

### **Kershaw v Micklethwaite [2010]**

This case reinforced the point that hostility between Personal Representatives and a beneficiary was not in itself a reason for removal.

In this matter complaints included delay in the administration, the potential for a conflict of interest and the failure to identify the boundaries to certain parcels of land. The judge considered each element and found either that they had no substance or that they were not serious enough to warrant removal. Poor relations between the parties was not enough.

In this case the court also took into account the fact that the Personal Representatives had been appointed by the testatrix and so it was considered that as she would have given some thought as to who she had appointed and that consequently something fairly serious would have to warrant their removal.

It was also considered that the possible increased administration costs occasioned by replacing the Personal Representatives should be taken into account.

### **Akin v Raymond and Whelan [2010]**

The court in this matter supported the view that considerable importance should be given to the fact that the testator had chosen his Personal Representatives, but the welfare of the beneficiaries was stated as being the main consideration.

In cases of misconduct, i.e. endangering estate property, or fairly clear lack of honesty or fidelity, there probably would be grounds for removal, but again, friction alone was not enough.

In this case the removal of the Personal Representatives came about as the result of one invoice for £163,000, said to be a debt of the estate, payable to a company controlled by one of the executors. The invoice did not hold up and was inconsistent with previous invoices. This was held as serious enough to justify removal not only of the executor in question, but also his co-executor who had supported payment of the invoice.

Other complaints including purported inappropriate loans and behaviour were rejected as being without substance.

### **Conclusion**

Consequently removing Personal Representatives is not as simple as it may appear. It depends entirely on the facts and there must be “*clear and compelling*” reasons that would adversely affect the administration and the welfare of the beneficiaries. Bad relations alone would not be enough and the Court is going to take into account both the fact that the testator chose their Personal Representatives and the fact that the costs of replacement may be disproportionate to the problem in the first place.

It is always better to try and resolve an issue by agreement rather than to have a solution imposed by the Court. This is also quicker and more cost effective and obviously a beneficiary would have to consider the size of what they are to inherit as against the costs of such a dispute.

A Personal Representative who insists on staying in their post must be prepared to defend their position and bear the risk of a hefty costs bill if it transpires their actions justify removal.

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