

"Bringing Down the Pr with Removing and D

BY ROBERT SELSOR¹
& WILLIAM GUST²



Robert Selsor
Polsinelli, PC



William Gust
Polsinelli, PC

Competing Interests and Agendas

The tensions that can arise between trustees and beneficiaries can be born of many causes, some legitimate and some not, and often more than one factor will come into play when a full-blown dispute breaks out among the interested parties of a particular trust. As with many cases, a suit seeking removal of a trustee must be judged on its own special facts, and the exercise of sound judicial discretion is critical.

Typical drivers for a complaining beneficiary to seek removal of a trustee include such legitimate reasons as poor trustee communication, poor investment results, self-dealing, and various other exercises of poor judgment or outright indifference. Other factors that often color these cases may be friction between trustee and beneficiary arising out of differing trust goals, differing degrees of risk aversion, and other factors that may place the interests of one against the other. At one end of the spectrum is the able and prudent trustee who carries out his or her duties, as defined by the trust, with careful judgment. He or she may be challenged by an impatient or foolish beneficiary who chafes at the restrictions placed upon that beneficiary's immediate entitlements. At the other end of the spectrum is the dishonest or incompetent trustee who allows trust assets to diminish at the expense of the beneficiaries or engages in self-dealing. Cases following these fact patterns are relatively simple for most courts to adjudicate. In the



first example, the relief is denied and the beneficiaries are sent on their way. In the second, the trustee is removed from office and may face the prospect of other sanctions, depending on the severity of the conduct at issue. It is the cases that fall between these two extremes, however, that are often the most challenging for courts and attorneys alike.

Trustee Removal According to the Trust's Terms

Although the Missouri Uniform Trust Code³ (MUTC) has a rather extensive statutory framework dealing with trustee removal in § 456.7-706,⁴ it must be remembered that most of the provisions of the MUTC are

“since”: Issues Presented Defending Trustees



“default” provisions, meaning that they apply in the absence of specific provisions to the contrary in the trust instrument.⁵ So it is with article 7 of the Uniform Trust Code (UTC), from which the same article in the MUTC is substantially derived. The general comment to article 7 of the UTC makes clear that “[t]his article contains a series of default rules dealing with the office of trustee”⁶ and “[e]xcept for the court’s authority to order bond, all of the provisions of this article are subject to modification in the terms of the trust.”⁷

There appears to be little Missouri authority addressing the enforceable parameters of a grantor’s customized

trustee removal provisions.⁸ The above principles appear to make it clear that a grantor has substantial latitude to make it either very easy to remove a trustee or to set up exacting standards that go well beyond the standards set forth in the removal statute. Simply the presence of exculpatory language in the trust document relieving the trustee of certain default duties or standards of performance may mean that he or she is not even in breach of trust for a course of conduct that, absent exculpation, might squarely be considered to be even a serious breach. A breach of trust is often the foundation of many trustee removal actions, whether pursuant to a removal clause in a trust instrument or the default provisions set forth in the MUTC.

Even so, there are limits to which a grantor can immunize his or her chosen trustee from removal. Section 456.1-105 sets forth a modest list of bedrock trust principles that *cannot* be overridden by a draftsman’s customized trust provisions.⁹ For example, that statute makes clear that “the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice” cannot be written out of a trust’s administration.¹⁰ Likewise, other portions of this statute make clear that a trustee’s duties cannot be reduced below a good faith standard and mandates “that a trust and its terms [must] be for the benefit of its beneficiaries.” In addition, it provides that the court retains the power to adjust trustee

compensation that is “unreasonably low or high.”¹¹

As a practical matter, many modern trust documents have provisions allowing for non-judicial removal and appointment of trustees. But those provisions often borrow heavily from established understandings of a trustee’s expected duties and standards of performance, making both statutory standards and caselaw relevant even in that context.

Trustee Removal Under the MUTC

In most trustee removal cases, § 456.7-706 of the MUTC provides the framework and the beginning of any analysis of a case seeking trustee removal. This section follows the Uniform Trust Code in many respects, but also incorporates several changes that are unique to the Missouri version of the statute as well. Arguably more than most sections of the code, this section also relies heavily on the common law’s treatment and definitions of breach of trust to flesh out the circumstances when removal of a trustee will or will not be appropriate.¹²

Who Can Remove a Trustee?

Section 456.7-706.1 provides that “[t]he settlor, a cotrustee, or a qualified beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.” So a settlor can seek removal, even when the trust is irrevocable,¹³ as can a co-trustee. Given a co-trustee’s fiduciary obligations,

he or she may even have an affirmative duty to seek removal under some circumstances.¹⁴ (Also note the special rules for dissenting co-trustees under § 456.7-703.8).

Since only qualified beneficiaries¹⁵ are referenced here, then presumptively other beneficiaries may not have this right, notwithstanding that they might be necessary parties to other types of actions involving trusts. Even qualified beneficiaries may not have this right in the case of a revocable trust in light of § 456.6-603, which provides that “[w]hile a trust is revocable and the settlor has capacity to revoke ... the rights of the beneficiaries are subject to [the settlor’s exclusive] control.”¹⁶

Although the above-cited statute does not include trust protectors, whether such individuals or others with trustee-like powers have standing to bring a trustee removal action is a legitimate issue. While the statute does not include these office holders, neither does it recite that it contains an exclusive list. Section 456.8-808.3 states that “[a] trust protector appointed by the trust instrument shall have only the powers granted to the trust protector by the express terms of the trust instrument.”¹⁷ So the power of a trust protector to bring a claim in court with respect to the trust appears to be limited by the terms of the trust. On the other hand, subsection 7 of the statute then makes clear that:

If a trust protector is granted a power in the trust instrument to direct, consent to, or disapprove a trustee’s actual or proposed investment decision, distribution decision, or other decision of the trustee required to be performed under applicable trust law... then only with respect to such power...the trust protector shall have the same duties

and liabilities as if serving as a trustee under the trust instrument.¹⁸

Given the previous analysis that most of the MUTC is comprised of default provisions that must give way to the specific terms of a trust instrument, it would appear that a trust protector may seek trustee removal if specifically empowered to do so by the trust itself.

As will be discussed below, though a court may also remove a trustee of its own initiative, there must still be a basis for the trustee’s removal or the court’s decision may be vulnerable to reversal.¹⁹

Also, although tax analysis is beyond the scope of this article, it is

“The limited and measured availability of the power to remove trustees under appropriate circumstances is a mainstay in the law of trusts.”

worth noting the warning of the UTC comment that trust provisions allowing a settlor to retain the power to be appointed as trustee or to appoint someone who is not “independent” may cause an irrevocable trust to be included in the settlor’s federal gross estate.²⁰

Under What Circumstances Is Removal Justified? **Serious Breach of Trust**

Section 456.7-706.2(1) provides that a court may remove a trustee if “the trustee has committed a serious breach of trust.”²¹

“A serious breach of trust may consist of a single act that causes significant harm or involves flagrant misconduct. ... [It] may also consist

of a series of smaller breaches, none of which individually justify removal when considered alone, but which do so when considered together.”²² The UTC comment recites that a trustee’s serious breach of its duty to keep beneficiaries reasonably informed or to provide information as required by § 456.8-813 may be one example of such a breach.²³ Consistent with the requirement that a breach be “serious,” Missouri courts have held that “[a] trustee will not be removed for every violation of duty or even breach of trust where the fund is in no danger of being lost.”²⁴ “Instead, clear necessity for interference to save trust property must exist.”²⁵

“The most obvious and primary cause for removal is breach of the fiduciary duty of loyalty involving a conflict of interest.”²⁶ Note that “[w]here a trustee has an individual interest in a transaction involving a trust asset, a trustee bears the *burden of proving* that his actions were proper and all doubts are resolved against him.”²⁷ On the other hand, an often repeated admonition in the caselaw is that the power of removal “should be used sparingly” and only when the misconduct in question demonstrates a lack of capacity or fidelity, putting the trust in jeopardy.²⁸ And, “[a] court will less readily remove a trustee named by the grantor, especially on a ground existing at the time of the appointment and known by the grantor.”²⁹

What Constitutes a Breach?

Although a thorough analysis of the myriad ways that a trustee can commit a breach of trust could fill an entire volume,³⁰ it is useful for purposes of any discussion of trustee removal to review the basic duties and obligations that a trustee holds upon acceptance of a trusteeship. Thus, to begin, it is appropriate to recite the guiding principles and duties that are set forth in § 8 of the MUTC. Section 456.8-801 provides that “[u]pon acceptance of a

trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with sections 456.1-101 to 456.11-1106.”³¹ Section 456.8-802 mandates that trustees adhere to the well known “duty of loyalty” requiring that a trust shall be administered “solely in the interests of the beneficiaries” and provides a mechanism for scrutinizing transactions that may affect a trustee’s personal interests.³² Section 456.8-803 requires a trustee to act impartially among multiple beneficiaries in administering the trust.³³ Section 456.8-804 requires a trustee to “administer [a] trust as a prudent person would” and to “exercise reasonable care, skill, and caution.”³⁴ Section 456.8-805 requires trustees to avoid unnecessary costs or unreasonable expenses in the administration of the trust,³⁵ while § 456.8-807 requires due care in selecting and monitoring agents of the trust in the performance of delegated functions.³⁶ Section 456.8-809 requires that reasonable steps be taken to protect certain trust property,³⁷ while § 456.8-810 embodies the common law requirement that adequate records of the trust’s administration be maintained.³⁸ Section 456.8-811 outlines the trustee’s duty to enforce and defend trust claims,³⁹ while § 456.8-812 references a duty to recover trust property from former trustees and third parties, as well as to redress a known breach of trust on the part of a former trustee.⁴⁰ Section 456.8-813 outlines the trustee’s very important responsibilities in keeping beneficiaries “reasonably informed about the administration of the trust[,]” of its existence, in accounting periodically to the beneficiaries, and in responding to reasonable requests for information.⁴¹

These are the principal obligations of a trustee in general terms. Related to these duties are a host of inherent obligations and responsibilities, not

to mention the challenges presented when some of these duties conflict with one another. It is the rare trustee who performs all of these duties with perfection, but the best among them sometimes come admirably close to that standard. And, the administration of a trust involving selfless, reasonable and honorable beneficiaries is substantially more attainable than one marked by beneficiary infighting, greed and unrealistic expectations.

Lack of Cooperation

Section 456.7-706.2(2) provides that a “court may remove a trustee if” a “lack of cooperation among cotrustees substantially impairs the administration of the trust.”⁴²

This is the basis for removal in the context of co-trustees who, although they may be able, honest and energetic in the pursuit of their duties, are hampering the trust’s administration because they are unable or unwilling to cooperate. As in other life contexts, the fault for such failure of cooperation can arise from a single trustee or can be laid at the feet of more than one co-trustee. But as a practical matter, regardless of the reasons for the dysfunction, a court may need to alter the trustee lineup in order to pave the way for smooth administration in the future.

As with other bases for removal, however, the court’s discretion in this regard is undoubtedly broad but not unlimited. In the case of *Betty Weldon Revocable Trust ex rel. Vivion v. Weldon ex rel. Weldon*,⁴³ the trial court removed two of three co-trustees for a serious breach of trust because they had failed to administer the trust in accordance with its terms or in the interests of the beneficiaries.⁴⁴ The third trustee, a daughter, was then also removed upon a finding that there had been a lack of cooperation among the co-trustees, as evidenced by the fact that there had been a lack

of meetings among the co-trustees.⁴⁵ The court of appeals reversed, holding that there was no evidence that formal meetings were required to properly administer the trust.⁴⁶ And, in the face of argument that the daughter’s status as a future beneficiary of the trust may have created a conflict for her, the appellate court noted that the grantor had named her as a successor co-trustee with obvious knowledge of that fact.⁴⁷

Unfitness, Unwillingness or Persistently Poor Administration

Section 456.7-706.2(3) provides for removal if, “because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries.”

This section undoubtedly overlaps with subsection 2(1) above (serious breach of trust) to the extent that the latter contemplates that a series of smaller breaches can collectively constitute a serious breach of trust. But this section can also be forward-looking in the sense that it allows a court to focus on a trustee’s ability, training, education, character or other factors that inform of his or her suitability for the job. A person with little education or business experience, for example, might be obviously less qualified to manage a substantial trust with complex holdings than a trustee with substantial training and experience with the particular challenges of the trust. Even if there are flaws in the trustee’s qualifications, work ethic or track record of administration, the court must still find that removal “best serves the interests of the beneficiaries.”⁴⁸ That latter requirement is a broad, fact-specific category that can encompass a multitude of factors ranging from the dollars and cents returns of the trust assets to the ability of the trustee to deal with rival family factions to issues

such as risk management and the cost of administration. “Interests of the beneficiaries” is a defined term in the MUTC which “means the beneficial interests provided in the terms of the trust.”⁴⁹

The UTC comment to this section recites that “[b]efore removing a trustee for unfitness the court should consider the extent to which the problem might be cured by a delegation of functions the trustee is personally incapable of performing.”⁵⁰ It is certainly common for trustees to delegate certain functions, such as preparation of tax returns or building maintenance, to others with specialized knowledge in those areas, and it would hardly be plausible to remove a trustee because he or she would need assistance in insular areas of concern. On the other hand, a certain degree of sophistication is often called for in selecting such trust agents and a trustee cannot delegate the entirety of his or her duties to others and expect that such action will not be found wanting.

No Fault Removal of a Trustee

Section 456.7-706.2(4), provides for trustee removal where:

[T]he trustee has substantially and materially reduced the level of services provided to that trust and has failed to reinstate a substantially equivalent level of services within ninety days after receipt of notice by the settlor, a cotrustee, or a qualified beneficiary *or* removal is requested by all of the qualified beneficiaries *and in either such case* the party seeking removal establishes to the court that:

- (a) removal of the trustee best serves the interests of all of the beneficiaries;
- (b) removal of the trustee is not inconsistent with a material purpose of the trust; *and*

(c) a suitable co-trustee or successor trustee is available and willing to serve.⁵¹

The title to this part of the article refers to “no fault” removal because this part of the statute contemplates removal under circumstances where the acting trustee is fully performing the duties of the office. Thus, for removal to be effected under this section, there must either initially be a substantial, unremedied drop in services or the qualified beneficiaries must be united in their opposition to the current trustee. This section of the statute is, in part, unique to Missouri and represents a departure from the UTC’s provisions in one important sense. While the UTC allows for removal when there has been a “substantial change of circumstances,”⁵² the drafters and policymakers contributing to the creation of the Missouri Uniform Trust Code appear to have felt that this term was too general. So it is that the MUTC instead allows for a substantial and material drop in the level of services that is unremedied after notice is given to secure the threshold requirement of this section. That is not to say that a trustee is now doing a poor job even after such a reduction. But, for example, if a trust has been serviced with great attention to detail, lavish personal contact and other incidentals that the beneficiaries have come to expect, then a trustee’s sudden economy with regard to its services may lay the foundation for its removal if the three additional findings can be established.

With regard to the other foundational requirement, no fault removal may be contemplated only if all of the qualified beneficiaries are in agreement. Thus, a single, disgruntled beneficiary or faction within the beneficiary ranks cannot launch a challenge to the trustee under this section if they do not have unanimity among

the class. This may not be a substantial hurdle in some cases where there are only two or three qualified beneficiaries, but it will undoubtedly be a challenging threshold qualification for many trusts with numerous qualified beneficiaries.

The Three Additional Required Findings

With respect to the three additional findings that are required under either of the scenarios contemplated above, a wide variety of case-specific factors must be considered to satisfy the requirements for these findings. Thus, for removal to “best serve[] the interests of all of the beneficiaries,” as contemplated by § 456.7-706.2(4) (a), skilled advocates on either side may have much to argue about in this regard.

Subsection (b) of § 456.7-706.2(4) requires that “removal of the trustee is not inconsistent with a material purpose of the trust.”⁵³ In that regard, it would seem that a trustee resisting removal on this point would need to be able to argue that its trusteeship – its specific control of the trust assets – must rise to the level of a material purpose of the trust. According to the UTC Comment to § 456.4B-411, “Material purposes are not readily to be inferred. A finding of such purpose generally requires some showing of a particular concern or objective on the part of the settlor[.]”⁵⁴ On the other hand, for example, a grantor’s selection of a relative with intimate knowledge of a family business or with a proven ability to deal with a difficult beneficiary might arguably make selection of that trustee a material purpose of the trust. Many trustees will believe that their selection for that position was a material purpose of the grantor, but many will have little basis to support that position. Absent clear indication of a material purpose within the four corners of the trust, however, it may be difficult to prove this point

with extrinsic evidence of the grantor's intention.⁵⁵ The rules of trust construction can thus play a significant role in determining whether a material purpose is at issue with respect to this section of the statute.⁵⁶

Section 456.7-706.2(4)(c) then requires that a suitable cotrustee or successor trustee is available and willing to serve. This section would seem to place obvious emphasis on a proposed trustee's suitability for the position, which, as discussed above, may include such diverse considerations as ability, experience, education and other resources that the candidate may bring to bear in discharging the contemplated duties. And an expressed willingness and availability to assume the trusteeship is a straightforward requirement. Among professional fiduciaries and many other qualified candidates, this will often not be an issue. But in the context of bitter litigation with an existing trustee, some candidates may balk at becoming involved with a trust with a history of conflict or may place conditions on their involvement that could, in some instances, undermine this requirement of the statute that arguably requires near unconditional willingness to serve.

The only reported Missouri case dealing with no fault removal of a trustee is *Davis v. U.S. Bank N.A.*⁵⁷ In *Davis*, certain beneficiaries of a trust administered in St. Louis filed a petition to remove their corporate trustee under § 456.7-706.2(4) (no fault removal), asserting that they had the support of all qualified beneficiaries, and further asserting that they had a highly qualified corporate successor trustee willing to assume the trusteeship.⁵⁸ They asserted that the new trustee would charge a lower fee in administering the trust, utilize an independent investment advisor, allow for more favorable tax treatment for certain beneficiaries, and could offer

better geographic access to their offices.⁵⁹ The trial court granted removal of the trustee on summary judgment and the court of appeals affirmed, citing the provisions of § 456.7-706.2(4)(b) and noting that the movant had "presented factually supported reasons why it would be beneficial to [the beneficiaries] to remove the present Trustee in lieu of [the proposed successor]."⁶⁰

Corporate Trustees Must Be Replaced By A Qualified Corporation

For cases involving "no fault" removal under § 456.7-706.2(4), there are significant additional exceptions to the availability or terms of removal in these circumstances. Thus, § 456.7-706.3(1) provides that "[i]n the event that a corporation is the trustee being removed, a suitable replacement cotrustee or successor trustee shall be another corporation qualified to conduct trust business in this state."⁶¹

Some practitioners have argued, with some validity, that this section unique to the Missouri version of the UTC was included to protect the business interests of trust companies. But if that is so, there is undeniably the additional safeguard that a replacement corporate fiduciary must have passed regulatory muster within this state before they will be qualified to take over from an existing corporate trustee. The safeguards built into the regulatory framework for trust companies are designed to prevent unscrupulous and unqualified fiduciary pretenders from taking advantage of the public.⁶²

The Statutory Order of Priority for Replacement Trustees Still Applies

Section 456.7-706.3(2) provides: "In the event that a successor trustee is not appointed under the provisions of section 456.7-704 or the court finds that all potential successor trustees are not suitable, then the court may

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appoint such trustee or trustees as the court finds suitable under the circumstances."⁶³

This section makes clear that, in the context of a trustee removal action, the order of priority for replacement trustees set forth in § 456.7-704 still applies. That section deals with vacancies in trusteeships and provides, among other things, that if one or more co-trustees remain in office after the event removing another co-trustee, the vacancy created by removal need not be filled, subject to the court's discretion under § 456.7-704.4 to nevertheless add a trustee if necessary. But if a vacancy must be filled, then the order of preference set forth in § 456.7-704.3 must be followed. That hierarchy is as follows:

- (1) by a person designated in or pursuant to the terms of the trust to act as successor trustee;

(2) by a person appointed by a majority in number of the qualified beneficiaries; or
(3) by a person appointed by the court.”⁶⁴

Pre-MUTC Trusts Are Not Subject to No Fault Removal If They Contain Any Removal Terms

Finally, with regard to no fault removal, the Missouri version of the UTC has an additional customized carve-out at § 456.7-706.3(3) to the availability of no fault removal under § 456.7-706.2(4): “With respect to a trust created under an instrument executed before January 1, 2005, the provisions of subdivision (4) of subsection 2 of this section shall not apply if the instrument contains any procedures concerning removal of any trustee.”⁶⁵

The MUTC became law in Missouri on January 1, 2005,⁶⁶ so the exception referenced above applies to pre-MUTC trusts. By its terms, a provision in such a trust providing for *any* procedure for removing *any* trustee will trigger the application of this subsection. Thus, even a trust term contemplating removal of a particular trustee under narrow circumstances will make no fault removal under the statute unavailable even if the term is far from comprehensive in its scope. With the passage of time, the application of this subsection will become less frequent as the proportion of pre-MUTC trusts to all active trusts in this state decreases.

Interim Relief

Section 456.7-706.4 contemplates interim measures while a trustee removal action is pending:

Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection 2 of

section 456.10-1001 as may be necessary to protect the trust property or the interests of the beneficiaries.⁶⁷

This section thus makes available to the court the full range of remedies for breach of trust on an interim basis. Section 456.10-1001 is broad in scope and gives the court wide latitude in fashioning a remedy that is appropriate for the particular circumstances. Of the 10 listed remedies, several are prominent for their potential application on an interlocutory basis.⁶⁸ These include provisions: regarding the availability of various forms of mandatory and prohibitory injunctive relief; allowing the court to order a trustee to account (a useful starting place for discovery in a pending case; allowing for appointment of “a special fiduciary to take possession of the trust property and administer the trust.”⁶⁹ This section follows the common law remedy allowing for a trustee *ad litem* when an appropriate initial showing can be made demonstrating a need for such relief.

Additional subsections of this statute: provide for suspension and removal of the trustee, relief that presumably would require a rather robust preliminary showing on the part of the petitioner; contemplate that a court can void a particular “act of a trustee, impose a lien or constructive trust on trust property, or trace” and recover assets or proceeds that have been wrongly disposed of;⁷⁰ and authorize the court to “order any other appropriate relief.”⁷¹

There is little Missouri authority on this interim relief section of the trustee removal statute. Since this section is reflected in the UTC, however, persuasive authority from other jurisdictions is available.⁷² And since so much of the interim relief contemplated here is equitable in nature, resort to the abundant Missouri decisions dealing with, for example, preliminary injunc-

tions, would seem appropriate.⁷³ Thus, the bare allegation of a petitioner that is disputed by the trustee has often been insufficient in the experience of these authors to support much of the interim relief contemplated above. On the other hand, a credible preliminary showing of malfeasance or likely pending harm to the trust would seem to warrant serious consideration for interim relief to be granted. Since the list of available remedies for interim relief is engrafted from § 456.10-1001, which deals with remedies for breach of trust, a question that is yet unresolved is presented as to whether such interim relief would be available for a purely no fault removal situation where no breach of trust has been alleged. But, given that Missouri’s probate courts now have all of the powers of a court of equity in any case, the logical result is likely that a court can render interim relief even in that type of case.⁷⁴

Although not listed specifically among the above-referenced remedies, an important pressure point in many trustee removal cases involves payment of legal fees while a case is ongoing. Once again, a whole spectrum of facts and equities can be imagined. At one end of that spectrum is the trustee who is deserving of removal and who accesses trust resources to mount a withering torrent of motions, burdensome discovery and other legal machinations designed to wear down a petitioner seeking its removal. But at the other end of the spectrum is the beneficiary who is pursuing his or her own agenda, contrary to the grantor’s wishes or the interests of other beneficiaries, and who seeks to cut off an innocent trustee’s presumptive right (and duty) to defend such a challenge. Careful consideration must thus be given by the courts to the particular merits of each case before acting on a request for interim relief.

Conclusion

Trusts have long existed as a ve-

hicle for holding and administering valuable assets for the benefit of their beneficiaries. Their usage has increased in recent years as a substitute for wills, conservatorships and various other mechanisms allowable under the probate code and elsewhere in the law. Central to their proper functioning, however, is the necessity of ensuring both competent and honest administration on the one hand and, on the other, preventing beneficiaries from unreasonably overriding the stated wishes and intentions of the trust's grantor. The limited and measured availability of the power to remove trustees under appropriate circumstances is a mainstay in the law of trusts. The careful exercise of that power, which also includes the decision not to remove a trustee unless warranted by the circumstances, is critical to the effective oversight of trusts.

Endnotes

1 Robert Selsor is a shareholder and chairman of the Probate and Fiduciary Litigation Practice Group for Polsinelli, PC. He is based in the St. Louis office. He is a fellow in the American College of Trust and Estate Counsel.

2 William Gust is an associate litigation attorney at Polsinelli, PC. He is based in the St. Louis office, with his focus is in the areas of probate and fiduciary litigation and commercial litigation.

3 Sections 456.1-10 to 456.11-1106, RSMo Supp. 2013.

4 Section 456.7-706, RSMo Supp. 2013.

5 See UNI. TRUST CODE § 105, COMMENT (amended 2010), available at http://www.uniformlaws.org/shared/docs/trust_code/utc_final_rev2010.pdf.

6 UNI. TRUST CODE, art. 7, General Comment (amended 2010).

7 UNI. TRUST CODE, art. 7, General Comment (citing § 105) (amended 2010).

8 See *Williams v. Duncan*, 55 S.W.3d 896, 900 (Mo. App. S.D. 2001) (“The creator of a trust has the right to appoint his [or her] own trustees, and may provide for the appointment of a successor or successors to the trustee on such terms as he [or she] chooses to impose.”).

9 See § 456.1-105, RSMo Supp. 2013.

10 Section 456.1-105.2(13); see also GEORGE GLEASON BOGERT, GEORGE TAYLOR BOGERT & AMY MORRIS HESS, *THE LAW OF TRUSTS AND TRUSTEES*, § 519 (1977) (Courts “of equity [may] enforce performance of trusts

... despite any attempt in the trust instrument to invest the trustee with uncontrolled discretion without accountability to any court”).

11 See § 456.1-105.2(7), RSMo Supp. 2013.

12 See also § 456.1-106, RSMo Supp. 2013 (providing that “[t]he common law of trusts and principles of equity supplement [the code] except to the extent modified by” statute).

13 See 4C FRANCIS M. HANNA, *MISSOURI PRACTICE: TRUST CODE & LAW MANUAL* § 456.706.1 Comment (2012 ed.).

14 See § 456.7-703.7, RSMo Supp. 2013.

15 See § 456.1-103(20), RSMo Supp. 2013 (defining “qualified beneficiary”).

16 Section 456.6-603, RSMo Supp. 2013; 4C FRANCIS M. HANNA, *MISSOURI PRACTICE: TRUST CODE & LAW MANUAL* § 456.6-603 Comment (2012 ed.). See also *Gunther v. Gunther*, 350 S.W. 3d 44 (Mo. App. E.D. 2011).

17 Section 456.8-808.3, RSMo Supp. 2013.

18 Section 456.8-808.7, RSMo Supp. 2013.

19 *Betty Weldon Revocable Trust ex rel. Vivion v. Weldon ex rel. Weldon*, 231 S.W.3d 158, 181 (Mo. App. W.D. 2007).

20 See Rev. Rul. 95-58, 1995-2 C.B.191.

21 Section 456.7-706.2(1), RSMo Supp. 2013 .

22 4C FRANCIS M. HANNA, *MISSOURI PRACTICE: TRUST CODE & LAW MANUAL* § 456.706.1 Comment (2012 ed.).

23 *Id.*, 4C FRANCIS M. HANNA, *MISSOURI PRACTICE: TRUST CODE & LAW MANUAL* § 456.706.1 Comment (2012 ed.).

24 *Weldon*, 231 S.W. 3d at 179.

25 *Id.*

26 4C FRANCIS M. HANNA, *MISSOURI PRACTICE: TRUST CODE & LAW MANUAL* § 456.706.1 Comment (2012 ed.).

27 *Deutsch v. Wolff*, 994 S.W.2d 561, 569 (Mo. banc 1999) (emphasis added).

28 *Weldon*, 231 S.W. 3d at 178.

29 *Id.*

30 See e.g., GEORGE GLEASON BOGERT, GEORGE TAYLOR BOGERT & AMY MORRIS HESS, *THE LAW OF TRUSTS AND TRUSTEES*, §§ 701-708 and §§ 731-735 (1977).

31 Section 456.8-801, RSMo Supp. 2013.

32 See § 456.8-802, RSMo Supp. 2013.

33 See § 456.8-803, RSMo Supp. 2013.

34 See § 456.8-804, RSMo Supp. 2013.

35 See § 456.8-805, RSMo Supp. 2013.

36 See § 456.8-807, RSMo Supp. 2013.

37 See § 456.8-809, RSMo Supp. 2013.

38 See § 456.8-810, RSMo Supp. 2013.

39 See § 456.8-811, RSMo Supp. 2013.

40 See § 456.8-812, RSMo Supp. 2013.

41 See § 456.8-813, RSMo Supp. 2013.

42 Section 456.7-706.2(2), RSMo Supp. 2013.

43 231 S.W.3d 158 (Mo. App. W.D. 2007).

44 *Id.* at 180.

45 *Id.* at 181.

46 *Id.*

47 *Id.*

48 Section 456.7-706.2(3), RSMo Supp.

2013.

49 Section 456.1-103(11), RSMo Supp. 2013.

50 Section 456.7-707, RSMo Supp. 2013, 4C FRANCIS M. HANNA, *MISSOURI PRACTICE: TRUST CODE & LAW MANUAL* § 456.707 Comment (2012 ed.).

51 Section 456.7-706.2(4), RSMo Supp. 2013 (emphasis added).

52 4C FRANCIS M. HANNA, *MISSOURI PRACTICE: TRUST CODE & LAW MANUAL* § 456.706 Comment (2012 ed.).

53 Section 456.7-706.2(4)(b), RSMo Supp. 2013.

54 4C FRANCIS M. HANNA, *MISSOURI PRACTICE: TRUST CODE & LAW MANUAL* § 456.4B-411 Comment (2012 ed.), (citing RESTATEMENT (THIRD) OF TRUSTS, § 65 comment d (Tentative Draft no. 3, 2001)).

55 See *Kempton v. Dugan*, 224 S.W.3d 83, 87 (Mo. App. W.D. 2007).

56 See *Blue Ridge Bank & Trust Co. v. McFall*, 207 S.W.3d 149 (Mo. App. W.D. 2006) (“[T]he paramount rule of will or trust construction is to discern the intent of the settlor.”) *Id.* at 156.

57 243 S.W.3d 425 (Mo. App. E.D. 2007).

58 *Id.* at 426.

59 *Id.* at 429.

60 *Id.* at 431.

61 Section 456.7-706.3(1), RSMo Supp. 2013.

62 See e.g. § 362.425, RSMo 2000 (prohibiting any business from using the words “trust company” unless it is a trust regulated by the division of finance); see also § 362.015, RSMo 2000 (authorizing the formation of banks and trust companies and prohibiting the operation of private, non-regulated banks and trust companies).

63 Section 456.7-706.3(2), RSMo Supp. 2013.

64 See § 456.7-704.3, RSMo Supp. 2013.

65 Section 456.7-706.3(3), RSMo Supp. 2013.

66 HB 1511, 92nd Gen. Assemb., Reg. Session (Mo. 2004).

67 Section 456.7-706.4, RSMo Supp. 2013.

68 Section 456.10-1001.2, RSMo Supp. 2013.

69 Section 456.10-1001.2(5), RSMo Supp. 2013.

70 Section 456.10-1001.2(9), RSMo Supp. 2013.

71 Section 456.10-1001.2(10), RSMo Supp. 2013.

72 See e.g. *In re D.M.B.*, 979 A.2d 15 (D.C. 2009).

73 See e.g. *Hayes v. WDL Techs., Inc.*, 343 S.W.3d 719 (Mo. App. W.D. 2011) (recognizing that circuit court had the equitable authority to fashion a remedy that included an appointment of a special trustee for the purpose of reinstating defendant’s corporate status).

74 Mo. CONST. art. 5, § 17.