



## Can the majority of trustees request a trustee to resign?

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*"I am a trustee on a family trust. I was recently informed by the other trustees that they are requesting me to resign as trustee. They did not provide me with any reasons except to say that they are allowed to do this as the trust deed gives them such powers. Can they just do this?"*

Our courts have held that animosity and difference of opinion are not sufficient grounds for trustees to remove another trustee from office. But what is the position where a trust deed authorises the majority of trustees to request another trustee to resign and they then do so? Is this a valid removal of a trustee? This position was recently addressed in the Free State High Court case of *Du Plessis NO and Others v Van Niekerk and Others*.

The court held that although it may appear from the wording of the trust deed, that the majority of trustees are correct in that they can require a trustee to resign on request, this is not correct as a unilateral request for removal must always be on good cause shown and that an implied term of such nature should be read into the contract. It further held the trustees requiring the resignation could also not argue that the trust deed provisions allowed them to act without any reason or even in bad faith as they are duty bound to act reasonably as a good person.

A further point highlighted by the Court was that given the interests of the trust and trust beneficiaries in having a trustee resign, it demanded that the necessary procedural requirements must be followed requiring proper notice of the meeting and of matters to be considered be given.

The Court in this case accordingly found that the request of the majority of the trustees that a trustee resign was not valid without good cause shown and the necessary procedural requirements being followed and the trustee being provided an opportunity to make representations in this regard.

From this case it would seem that your co-trustees may have acted incorrectly in requiring you to resign and it would be advisable that you consult your attorney to consider whether the request is valid and what further steps should be taken, bearing in mind the findings of the Court in the *Du Plessis*-case.



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