The Law Society

Private Client

Professional trustee retires from practice

Is it your intention to carry on as a trustee?

No

What does the trust say about retirement?

Subject to express powers: can you use statutory powers?

Yes

Will you be replaced?

Yes

s36(1) TA 1925 allows appointor or continuing trustees to appoint trustee in place of retiring trustee

No

s39 TA 1925 allows retirement without replacement where trustee declares by deed that he/she wishes to retire, and other conditions fulfilled.

Either

Under s19 TLATA 1996 so long as:

- No appointer
- Beneficiaries are adult, have capacity and between them entitled to all the trust property.

Where no replacement, continuing trustees consent required in order to vest.

No

Apply to Court?

S41 TA 1925 Power to substitute where independent, difficult or impracticable to do so without court's assistance

Court's inherent jurisdiction – can remove without replacing.

Vesting obligations

S37(i)(d), 39(2) and 19(4) create obligations on retiring trustee to vest trust property. Automatic vesting – S40 TA 1925

Protection for outgoing trustees

- Reimbursement; exoneration; retention, realisation.
- Common law lien.
- Equitable lien.
- Express indemnity.
- Obligation to accept reasonable arrangement so as to release a lien.

Yes

Is it appropriate that you continue? Consider each trust on a case by case basis.

Will you remain with the firm in another capacity eg consultant

No

Yes

Ensure client/beneficiary has been notified of change in status

Consider:

- distinction between professional advice and acting simply as a fiduciary
- whether subject to AML
- insurance position
- practising certificate
- consider impact of any possibility of relocation