

PRACTICE DIRECTION – HOW TO START PROCEEDINGS

This practice direction supplements Part 9 of the Court of Protection Rules 2007

PRACTICE DIRECTION G – APPLICATIONS TO APPOINT OR DISCHARGE A TRUSTEE

General

1. Rule 71 enables a practice direction to make additional or different provision in relation to specified applications.

Applications to which this practice direction applies

2. This practice direction makes provision for applications:
 - (a) for the exercise of any power (including a power to consent) vested in P whether as a trustee or otherwise (section 18(1)(j) of the Act);
 - (b) under section 36(9) of the Trustee Act 1925 for leave to appoint a new trustee in place of P;
 - (c) under section 54 of the Trustee Act 1925 as to the court's jurisdiction;
 - (d) under section 20 of the Trusts of Land and Appointment of Trustees Act 1996; or
 - (e) for the court's approval of the appointment of a trustee in accordance with the terms of a trust.
3. A deputy may not be appointed to exercise any power vested in P, whether as a trustee or otherwise.¹ Hence, an application must be made to the court for the court to make such a decision.

Permission to make applications to the court

4. Section 50(1) of, paragraph 20(2) to Schedule 3 to, the Act and rules 51 and 52 set out the circumstances in which permission is or is not required to make an application to the court for the exercise of any of its powers under the Act.

¹ Section 20(3) of the Act prevents a deputy being given power to exercise such powers on behalf of P.

Information to be provided with the application form

5. In addition to the application form COP1 (and its annexes) and any information or documents required to be provided by the Rules or another practice direction, the following information must be provided (in the form of a witness statement, attaching documents as exhibits where necessary) for any application to which this practice direction applies:
- (a) a copy of the existing trust document;
 - (b) where relevant, a copy of any original conveyance, transfer, lease, assignment, settlement trust or will trust;
 - (c) the names and addresses of any present trustees and details of any beneficial interest they have in the trust property. If the present trustees are not the original trustees, an explanation should be provided as to how they became trustees and copies of any deeds of appointment and retirement should be provided;
 - (d) the full name, address and date of birth of any person proposed to replace P as a trustee, and details of his relationship to P;
 - (e) confirmation that the trust is not under an order for administration in the Chancery Division;
 - (f) if there is only one continuing trustee, the applicant must confirm that both the trustee and the proposed new trustee have not made an enduring power of attorney or a lasting power of attorney in favour of the other party;
 - (g) if an enduring power of attorney or a lasting power of attorney has been executed by a continuing trustee, a certified copy of that document must be provided. If the power has not been registered, the applicant must confirm that the trustee is still capable of carrying out his duties as a trustee;
 - (h) the full name and address of any person who has an interest in any trust property as the beneficiary of a will, and whether any of them are children or persons who lack capacity;
 - (i) if the proposed new trustee is not a solicitor or a trust corporation (for example, a bank) and has not been appointed as a deputy for the trustee lacking capacity, the applicant must provide a witness statement from a person independent of the applicant, who has no interest in the trust property, attesting to the applicant's fitness to be appointed as trustee;

- (j) if the application relates to a transfer of assets in a will trust or similar settlement into the names of new trustees, accurate details of the trust assets must be provided (including full details of any stocks and shares held);
 - (k) a copy of any notice of severance and evidence of service;
 - (l) a copy of the will and grant of probate to the deceased's estate (where relevant);
 - (m) confirmation of all relevant consents; and
 - (n) a copy of a signed trustee's special undertaking.
6. The court may direct that other material is to be filed by the applicant, and if it does, the information will be set out in the form of a witness statement.
7. If any of the information mentioned above has been provided already (e.g. by way of inclusion in an annex to the application form) it need not be provided again.

Additional information to be provided where the application relates to real property

8. In addition to the information specified in paragraph 5 above, where the application relates to real property, the information specified in paragraph 9 below must be provided. The information will be set out in the form of a witness statement.
9. The information which must be provided is:
- (a) the address of the property concerned, and whether it is freehold or leasehold;
 - (b) the title number of the property and a copy of its entry in the Land Registry (if registered land). If the land is unregistered, the applicant should inform the court accordingly; and
 - (c) if the property is leasehold the applicant should advise the court as to whether he has a licence or consent to the assignment, and provide a copy of the same (or advise if a licence or consent is not necessary and the reason why it is not needed).
10. If any of the information mentioned above has been provided already (e.g. by way of inclusion in an annex to the application form) it need not be provided again.