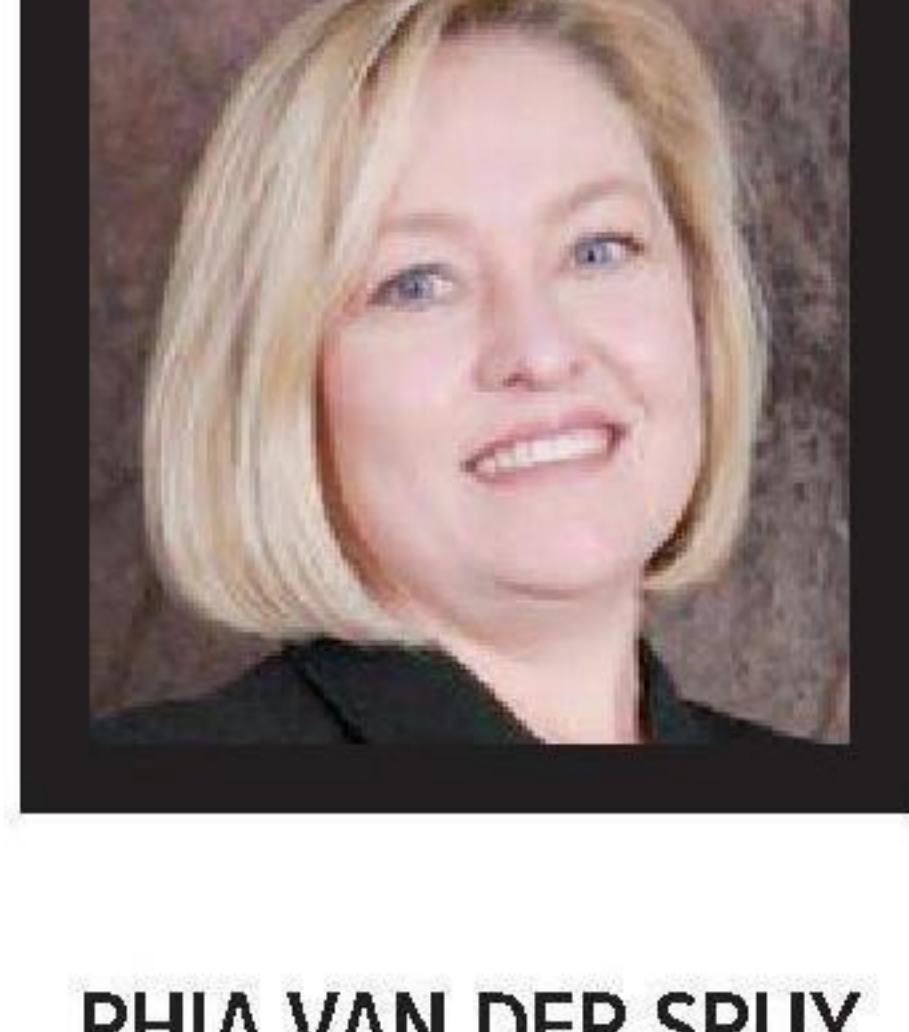


TRUSTS TO TRUST



PHIA VAN DER SPUY

Trustees are subject to High Court Master's voice

THE MASTER of the High Court can play a role in ensuring that the trustees of a trust conduct themselves in a proper way in accordance with both the law and the trust instrument.

In certain instances, the Master may even remove a trustee from office.

The Master of the High Court does not have the power in terms of Section 19 of the Trust Property Control Act to remove a trustee if such trustee fails to comply with a request by the Master of the High Court to account to the Master of the High Court in terms of Section 16, but can apply to the court for an order directing the trustees to comply with such request.

Ironically, the Master of the High Court does have the power to remove a trustee in terms of Section 20(2) of the Trust Property Control Act if a trustee does not comply with a lawful request of the Master of the High Court, such as a request to provide accounts and documents for the trust in terms of Section 16 of the Trust Property Control Act.

The Master of the High Court may also, in terms of Section 20(2) of the Trust Property Control Act, remove a trustee without applying to the court upon failure by a trustee to perform satisfactorily any duty imposed upon him or her by or under this act (not other laws), such as when a trustee does not act with the necessary care, diligence and skill expected of a person managing the affairs of another in terms of Section 9(1) of the Trust Property Control Act. This may, however, be difficult to prove.

Proof will have to be provided, for example, that the trustee does not attend trustee meetings, does not respond to communication or fails to co-operate in managing the trust assets.

The Master of the High Court sometimes regards the board of trustees as a unit and may want to remove all trustees at once, rather than one only, as the board of trustees is responsible for the affairs of a trust.

Objective supporting evidence will play an important role and the Master of the High Court may give the trustee an opportunity to respond to the allegations to form an overall view of the matter.

However, if a trustee fails to comply with a request of the Master of the High Court to perform any duty imposed on him, her or it by the trust instrument or by the law (excluding the Trust Property Control Act), the Master of the High Court will have to apply to the Court for an order directing the trustees to perform such duty in terms of Section 19 of the Trust Property Control Act, and does not have the power to remove such a trustee.

In terms of Section 20(1) of the Trust Property Control Act, the Master of the High Court may, on application to the court, have a trustee removed if the court is satisfied that such removal will be in the interest of the trust and its beneficiaries.

Note that in terms of Section 23 of the Trust Property Control Act anybody who feels aggrieved by the removal of a trustee by the Master of the High Court may apply to the court for relief.

Although the Master of the High Court is sometimes cautious to remove a trustee and rather request the matter to be heard by a court, the Trust Property Control Act does empower the Master of the High Court to remove a trustee as discussed above and may save money and time.

Phia van der Spuy is a registered Fiduciary Practitioner of South Africa®, a Master Tax Practitioner (SA)TM, a Trust and Estate Practitioner (TEP) and the founder of Trusteeze®, a professional trust practitioner.