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**TRUSTEE, PERSONAL REPRESENTATIVE, AND  
GUARDIAN RESIGNATION: HOW TO JUMP SHIP**

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## TRUSTEE/GUARDIAN/EXECUTOR RESIGNATION: HOW TO JUMP SHIP

*Right now everything is great, everyone is happy, everyone is in love and that is wonderful. But you gotta know that sooner or later you're gonna be screaming at each other about who's gonna get this dish. This eight dollar dish will cost you a thousand dollars in phone calls to the legal firm of That's Mine, This Is Yours*

- When Harry Met Sally

### 1. Introduction

The role of fiduciary can be rewarding. Not only can fiduciaries earn substantial fees, but they also can take solace in the fact that they are putting the needs of others above their own. In many cases, however, the rewards may not be worth the headache, stress, and liability that accompany the role of fiduciary.

The purpose of this paper is to overview the resignation process for trustees, executors, administrators, and guardians.

### 2. Acceptance of Appointment

Often, a potential fiduciary can identify a bad situation and decline to serve from the beginning. In those situations, the named fiduciary must make certain to not accept.

#### 2.1 Acceptance by Trustees

Nearly all trust instruments identify a specific person or institution as trustee of the trust. However, merely naming a trustee does not force the named trustee to accept the position.<sup>1</sup> Rather, the named trustee must accept the trust to become trustee, and until the person named as trustee accepts the trust, the person incurs no liability.<sup>2</sup>

Typically, a person accepts a trust by signing either the trust instrument or a separate written acceptance of the position of trustee.<sup>3</sup> Additionally, a person named as trustee is presumed to have accepted a trust if the person exercises power or performs duties under the trust.<sup>4</sup> For instance, if a named trustee executes a warranty deed conveying trust property, the person has accepted the trust.<sup>5</sup> If the initial named trustee does not accept the trust, the alternate trustee may accept it.<sup>6</sup>

There are some situations where a named trustee is not ready to accept the trust, but wishes to either investigate or take action to preserve the trust property. For instance, a trustee might want examine the condition or character of the trust property prior to deciding whether to accept the trust. Fortunately, there are a limited number of actions that a named trustee or suc-

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<sup>1</sup> See *Clark v. Wisdom*, 403 S.W.2d 877, 883 (Tex. Civ. App.—Corpus Christi 1966).

<sup>2</sup> Tex. Prop. Code § 112.009(b).

<sup>3</sup> Tex. Prop. Code § 112.009(a).

<sup>4</sup> Tex. Prop. Code § 112.009(a).

<sup>5</sup> See *Bliden v. Greenspan*, 751 S.W.2d 858 (Tex. 1988).

<sup>6</sup> Tex. Prop. Code § 112.009(c).

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