



# Aviation Trustee Resignation: Practical Advice for Hiring a Successor Trustee

Receipt of Resignation Notice

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Choosing a Successor Trustee

Trusts are commonly used and universally accepted in aviation. Thousands of aircraft have been placed into trusts over the past several decades and the use of trusts has become integral to many aviation ownership, financing and leasing structures.

Documenting the Resignation and Succession

However, recently a new issue has arisen that forces some owner participants, lessees and lenders to carefully consider their options and take decisive action. How do you proceed when your trustee resigns from its role?

Avoiding Common Issues

## **Receipt of a Resignation Notice**

Summary

A trustee's decision to resign may result from conflicts with another party, lack of payment, perception of increased risk, corporate restructuring or a general move away from the line of business. The trustee will commence the process by sending an official notice to the required parties of its intention to resign as trustee, along with a request that the owner participants appoint a successor trustee. In some cases, the trustee may provide an informal notice prior to the official resignation notice to provide the parties more time to plan for the transition to a successor trustee.

Most trust agreements require the trustee to give 30-days advance written notice of resignation. In that time the owner participants are required to find and appoint a new owner trustee. Often the process of appointing a successor trustee, especially with complex transactions and structures, may take far longer than 30 days. Fortunately, resigning trustees have been reasonably flexible about granting additional time.

A trust cannot be left without a trustee, so the trustee must remain in the role until a successor is either voluntarily appointed by the owner participants or appointed by judicial action. The process of getting a court appointed trustee is somewhat cumbersome and may result in aircraft registration and loan issues, so should be avoided if possible.

### **Choosing a Successor Trustee**

When selecting a successor trustee, owner participants should consider the party's qualifications, experience and continued commitment to the aviation industry.

A potential successor trustee must meet all the qualifications of trustee under the trust agreement. In aviation transactions, especially those with U.S. FAA registered aircraft, this will typically include that the successor trustee qualifies as a U.S. citizen pursuant to 49 U.S. Code § 40102(a)(15). There also may be other qualifications to consider such as capitalization or rating agency requirements. Some qualifications can be waived by the owner participants and other parties, but regulatory requirements, such as U.S. citizenship, must always be satisfied.

The parties should also vet any successor trustee based on its experience in similar transactions and capability to perform all the functions set forth in the trust agreement. Consideration should also be given to the successor trustee's long-term commitment to serving as a trustee in the aviation industry. The successor process can be lengthy and expensive, so choosing your successor trustee wisely may avoid the need to repeat the process in the future.

### **Documenting the Resignation and Succession**

The process of documenting the introduction of a successor trustee can be approached in several ways but must involve all interested parties.

In most situations, the resignation and succession has been handled by way of an instrument between the original trustee, successor trustee and owner participants. Often the resignation of the trustee, the appointment of the successor trustee by the owner participants and the acceptance by the successor trustee of the appointment is handled in one document. In other cases, the old trust and lease are terminated, and the owner participants enter into new agreements with the successor trustee. In either case the parties may need to agree on certain matters related to the registration of the aircraft and will want assurances that the other parties will execute related documents and take such other actions as are necessary to facilitate the appointment of the successor trustee.

Transaction related documents will usually also need to be amended and/or assigned. Lenders should be notified early in the process as they will want to ensure continuation of their security interest. Additionally, lessees should be involved in the process so that leases can be properly assigned, or new leases put into place.

Consideration should be given to documents that need to be filed with aviation authorities with jurisdiction over the aircraft. For any aircraft registered to the trustee with the U.S. FAA, the resignation and succession documents must first be reviewed and approved by FAA Aeronautical Center Counsel and then they can be filed with the FAA along with the documents necessary to register the aircraft to the successor trustee.

### **Avoiding Common Issues**

The best approach to avoiding problems when appointing a successor trustee is to assemble experienced aviation advisers just as you would at the commencement of a transaction.

If there is financing on the aircraft in the trust, the trustee and owner participants are likely required by the loan documents to notify the lender of any change of ownership. Lenders may have different preferences about how to document the appointment, either by amendment or assignment, or may have other requirements, so a failure to involve the lender early in the process may cause delays or create liability under the loan documents.

Lessees and operators should also be notified early of the introduction of the successor trustee. If the trustee is the registered owner of the aircraft, the appointment will require a new registration with the U.S. FAA and potentially with other aviation authorities. The lessee may help identify timing for the successor trustee to enter the structure based on the schedule of the aircraft to avoid liability for certain taxes. Lessees may also need to provide new certificates of insurance.

Involving experienced aviation counsel is essential to avoiding many issues. If the successor trustee will be the new registered owner, potential tax exposure must be considered. In the U.S. and many other jurisdictions, changing the trustee of an existing trust would typically not be considered a taxable event, however, the fact that the registration will change may invoke queries from taxing authorities and some states may view the tax issues differently. Having legal counsel review the applicable tax rules is critical to avoid tax risks.

### **In Summary**

While receipt of a letter of resignation from a trustee is an unenviable situation, with proper planning and attention to the following steps:

- Prompt reaction to a letter of resignation and establishment of communication with the trustee;
- Thoughtful selection of a qualified successor trustee;
- Consideration of necessary required documentation; and
- Engagement of experienced advisers

the introduction of a successor trustee can be safely and efficiently accomplished.

For additional information about the trustee resignation and succession process, contact the TVPX trust professionals, David Wall, Brett King, Mike Hoggan or Scott Nielsen at +1 801.877.0478 or visit our website at [www.TVPX.com](http://www.TVPX.com).