

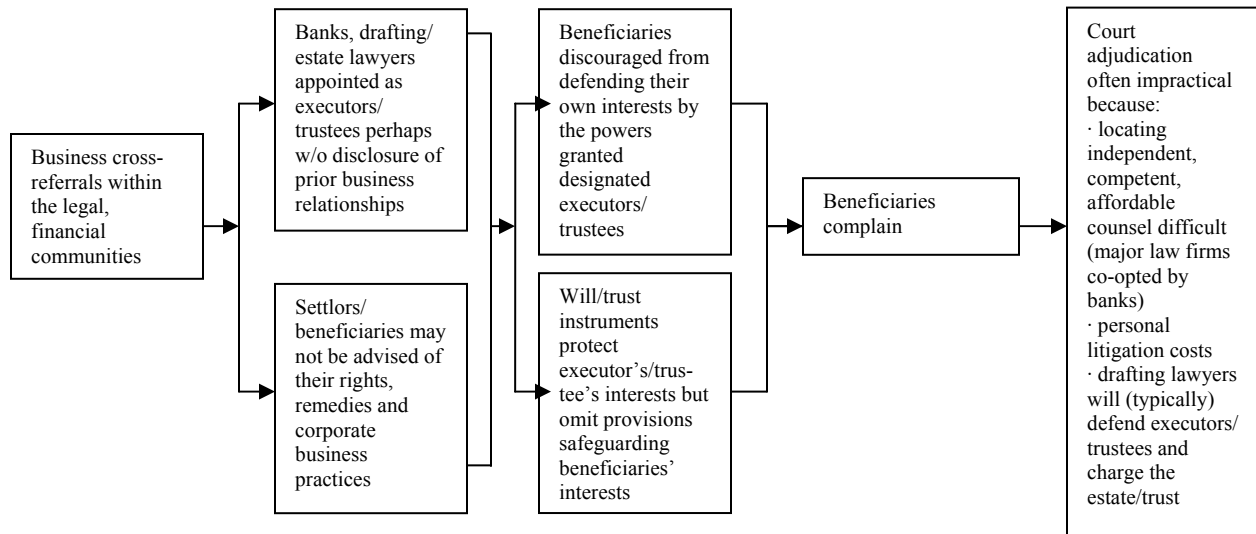
To Anyone Interested In Better Trust/Estate Administration:

It is undoubtedly true that many executors/trustees shoulder their fiduciary burdens responsibly, administering both with reasonable competence and accountability and present no cause for complaint. Yet it is also true that over the years, Heirs® has received letters and phone calls from literally thousands of dissatisfied beneficiaries and even settlors who typically do voice legitimate concerns about the administration of a trust or estate. Are there countless others who simply don't speak up? Are all beneficiaries aware that executors/trustees have a duty to administer prudently as well as competently and at minimum cost according to fiduciary principles rather than so-called 'industry standard'?

While executors/trustees undoubtedly perform well much of the time, there is anecdotal evidence that improvement is possible. Despite new, expanded rules easing the removal of trustees (but not executors) courtesy of the Uniform State Commissioners, experience suggests that mediating disputes in court is not always cost effective. So the question becomes – does the current administration of trusts/estates warrant increased intervention by regulatory authorities or not? Is there significant room for improvement? For example, should competent, adult beneficiaries be granted more control – say with a provision to allow switching from one corporate trustee/executor to another without having to prove cause. Wouldn't such a change encourage beneficiaries to promote their own best interests by seeking the 'best' possible (corporate) administration? Or would beneficiaries be inclined to shop trustees in search of one that would do whatever was asked even if the request was unreasonable? And again, should not the overriding objective be the betterment of a beneficiaries' quality of life rather than slavish adherence to the wording of an instrument perhaps drafted in an era when trust administration was not yet a major corporate profit center. And what about beneficiaries who suffer in silence because they lack the resources and courage to challenge an executor or trustee in or out of court?

The enclosed survey is designed to help regulatory authorities (viz. the OCC, Federal Reserve, Office of the Attorney General, SEC) and state legislators assess the quality of service provided by executors/trustees (especially corporate) and determine whether or not intervention is or is not warranted. Since the will/trust instrument defines the basic rules which will govern administration, this survey will explore both how executors/trustees are appointed and whether the terms of the will/trust instrument reasonably balance the beneficiaries' best interests as well as those of the executor/trustee. Included in the survey is a list of beneficiary complaints cataloged by HEIRS® over the years which suggests that there may be room for improvement. Of particular concern is whether business cross-referrals between banks who seek service as corporate fiduciaries and lawyers who draft wills/trusts always supports beneficiaries' best interests. For example, should a drafting lawyer in discharging his responsibility to protect the settlor's interests be necessarily obligated to defend an executor/trustee even though by doing so he may prejudice the interests of the settlor's own beneficiaries? Diagrammatically –

How Bank/Lawyer Business 'Relationships' Might Ultimately Lead To Dissatisfied Beneficiaries



The questionnaire is somewhat long to be sure! But because the questions are informative, mostly easy and even fun to answer, it should take no more than fifteen minutes to complete. In fact, you are urged to express your opinions whether you are generally satisfied with the administration of your trust/estate. Your opinion that will help regulators determine if intervention is warranted or not. **But if you only wish to answer a few questions, the important thing is that you read and return the questionnaire anyway whether you are happy with the administration of your trust or not.** Here's a carrot: return this survey to Heirs® even if incomplete and get back a statistical summary (read no names!) of beneficiaries and settlors responses across the nation, a document which may prove of interest to your executor/trustee! Finally, return a completed questionnaire and earn a one-year Heirs® membership (including the *Heirs® Personal Trust Handbook*) at the reduced rate of \$49. (Remember to include your membership application with your check.) Then stay current on our progress by tuning in to the Heirs® website at www.heirs.net. This questionnaire was developed as a public service to improve the administration of trusts and estates. Your response will contribute materially to this effort!

Yours truly,
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HEIRS[®] BULLETIN

Old News For Most – New News For Some!

If you are a beneficiary or settlor of a trust or estate administered by an individual or a bank/independent trust company, it is possible – and likely – that you have legitimate complaints about its administration. For example, it's no secret that corporate trustees are constantly increasing fee rates, converting common trust funds/individual portfolios into more costly, often lackluster proprietary funds and do not always communicate responsibly or act with accountability. In fact, while theft by individual trustees is well documented, it is not unknown even for corporate trustees to decimate the envelope of fiduciary duty by self-dealing. Yet how is it that banks too often ignore such complaints? Simple – to your bank, you represent locked up business because the large majority of trust instruments lack a 'no fault' trustee removal clause while wills almost never include provision for removing an executor. So you cajole, argue or threaten to contact your lawyer and even the media but usually without success. Certainly if yours is a multimillion dollar account, chances of a 'voluntary' resignation are negligible. And if the bank or compensated individual trustee does finally cooperate, your personal legal expenses will likely exceed \$5,000 and your trust will be subjected to a costly court accounting designed not to protect your interests but the trustee from future litigation!

It's certainly not news that for years beneficiaries have been denied most advantageous administration by an outdated system which responds preferentially to the demands of trustees/executors rather than beneficiaries. Ultimately, beneficiaries might wish for the option to choose (at the least) their own corporate trustee/executor, thus instigating competition into a system which presently affords executors and trustees alike near monopolistic powers. But until that day arrives, it is believed that beneficiaries could greatly benefit if beneficiaries could take their complaints directly to their state attorney general or even federal authorities with the assurance that they would take interest. In the meantime, it is (somewhat) reassuring to learn that beneficiaries' complaints have at least been recognized (but not remedied!) by a consumer advocacy group, the Office of the Comptroller of the Currency (OCC), academia, the trust/estate bar and even the industry itself, all of whom appear to suggest that trust/estate administration is overdue for a major overhaul. Please consider the following pertinent quotations.

J. Timothy Ritchie, Trust Counsel for the Northern Trust Company, Chicago, IL.

There is ample evidence that a major source of the traditional trust and estate administration business of banks is referrals from attorneys. Many clients who seek estate planning advice from attorneys have relationships with corporate fiduciaries, but the attorneys can have a significant influence on whether a bank should be named as an fiduciary in estate planning documents. In an effort to engender confidence in a bank's expertise, banks in the past have provided certain services to attorneys, usually at little or no cost, to assist them in preparing estate planning documents. These services included the publication of forms books, transcribing forms on disc, drafting Wills and trusts for the attorneys use with clients, and reviewing estate planning documents prepared by the attorney in which the bank was named in some fiduciary capacity.

“Banks Step Carefully On Changing Path”, *Trusts & Estates*, December 1989.

Consumer advocate Ralph Nader:

The conflicts of interest between bank commercial and trust departments regularly favor the enrichment of the former. Trust beneficiaries and pension plan participants are deprived of the information and rights they may want to participate in the management and investment of their

money. Trust and estate lawyers work closely with the bank to perpetuate this oligarchic condition...The new 'profit-centered' banks are seriously disturbing many older or retired bank executives who see the trust function of banks being ramshackled by the supermoney and superconglomerate dealings of the new bank managers...more (such executives) are needed to speak and act to further those ideals that they believe are being violated wholesale in the pell-mell rush for profits.

Forward to Citibank (1973).

Longtime consultant to the industry, Russ Alan Prince:

The situation in the trust and estates business is that the product has already been sold and in many cases legal stipulations make it exceedingly difficult to adversely impact on the trust from the perspective of the trust administrator. Therefore, is not a minimal level of service sufficient? Actually, a minimum level of service quality is indeed sufficient. The presumption here is that the trust officers are willing to endure antagonism by trustees (sic).^{} This may include legal conflicts, which the trust institution will probably win, but not without cost as well as adverse publicity. (Underlining added.)*

“Beneficiaries Are Satisfied When Involvement Is Generated”, *Trusts & Estates*, August 1991.

Dean Miller, Former Deputy Controller Of The Currency For Trusts (OCC):

(common law) does not...provide a clearly defined and comprehensive catalog of specific rules and regulations concerning fiduciary activities...(resulting in)...a reluctance of banking agency supervision to support their fiduciary specialists (bank examiners)...Fiduciary supervision has, over the long run, been given a secondary priority at the banking agencies. (Brackets added.)

“The Supervision of Bank Asset Management Activities”, *Trusts & Estates*, March 2000.

Law Professors Jesse Dukeheimer (University of California) And Stanley M. Johanson (University of Texas):

The inability of beneficiaries to change trustees lessens competition among trust companies and contributes to higher trustee fees. Should this rule be changed?...Attorneys maintain that trust laws favor corporate trustees, so the bank's behavior has to be fairly bad to win at all. To win damages, the behavior usually must be shocking!...Legal provisions forcing heirs to pay legal fees for both sides deter heirs from suing.

Wills, Trusts and Estates (2000).

Furthermore, local probate courts cannot always be depended upon to provide an adequate forum for the redress of beneficiaries' complaints.

Dominic Campisi, leading trust/estate litigator representing banks:

The beneficiary living in another state than the situs of trust administration...frequently finds himself with a hostile forum in the local probate court. On the other hand, the probate judge may know the trust personnel who appear for annual accountings, appear at trust company programs, and be on a first-name basis with the local trust officers. Indeed, trust companies often hire every qualified trust practitioner in the situs, in an effort to conflict out attorneys who might otherwise represent a beneficiary in a dispute over trust administration. The beneficiary with a serious problem often cannot find qualified local counsel, because every experienced practitioner has

^{*} While the quote is verbatim, obviously the word 'beneficiaries' should be substituted for the word 'trustees'.

represented the trust company in fiduciary and administrative matters, and has a vested interest in protecting this source of future business. Furthermore, the income or remainderman from another state has limited access to counsel with experience in the local probate court...Many local probate courts have little experience with trust administration problems...the average probate judge has enormous experience in ordinary probates of wills, will contests...but most specialized probate courts have little experience with complex trust or investment or tax disputes....the bulk of probate or orphans court or surrogate judges likely have little exposure to the intricacies of the Uniform Prudent Investor Act and modern portfolio theory, or with the subtle conflicts involved in the indiscriminant and wholesale conversion of common trust funds and individual portfolios into proprietary mutual funds by corporate trustees.

Personal communication to Heirs[®] as recited in an Amici Curiae Brief submitted by Heirs[®], Inc. in Vickie Lynn Marshall v. E. Pierce Marshall, Supreme Court of the United States, November 2005.

For their part, the bankers would appear to disagree.

Thomas S. Stewart, Trust and Investment Management Division, American Bankers Association (ABA):

...unhappy trust beneficiaries make up a very small group...in the personal trust industry...there's a very high level of professionalism and dedication.

Philadelphia Inquirer, March 10, 1991.

Heirs[®] responds to the ABA:

To the first part of the above quotation, one would ask where the ABA gets its statistics. It may well be true that up to now, most aggrieved settlors and beneficiaries have been a "silent majority" because they have had little incentive to file formal complaints or lawsuits. Arguably most do not have the legal or financial resources or even the time to procure relief through the courts. Yet their numbers must still be substantial considering the constant attention visited on trust/estate issues by the print and broadcast media over the years.

To the second part of the quotation, its veracity depends critically on who you are talking to!

Resolving Disputes Often A Tough Proposition

In theory, courts are supposed to resolve beneficiary-trustee/executor disputes. But in practice it doesn't happen often enough and here's why. Sure – you can petition the court for relief – if you can find independent, competent, affordable counsel – a rare bird in the bigger cities where it's no secret that the banks have mostly co-opted the experienced law firms. Oh sure – you can petition if you are willing to confront a deep-pocketed adversary who may be inclined to use its control of your family finances to its advantage. Oh sure – you can risk invasion of your trust assets for its defense costs in order that the bank 'may defend your trust' sometimes even before a court adjudication of the issues. No surprise that the less adventuresome suffer in silence and servitude. Yet even those inclined to fight may take a pass when it is learned that local surrogate courts are not only friendly to banking interests but may not have the expertise – much less the time – to handle anything significantly more complicated than (say) a routine will contest!

There is regulatory hope!

Heirs[®] argues that administration policies favoring corporate executors/trustees can be traced to tacit agreements within the industry to cross-refer business as well as favor one another's interests – at the beneficiaries' expense. For example, key provisions in the will/trust instrument that would otherwise protect beneficiaries' interests are sometimes omitted by drafting lawyers while other provisions are included which tend to provide inappropriate support for the interests of the compensated executor/trustee. Historically, at least, banks have supplied standard forms as well as reviewed and

drafted wills and trusts for referring attorneys perhaps to a point of practicing law without a license to do so. More significantly, it is known that banks generally cooperate with drafting lawyers both with business referrals and sometimes even help a drafting lawyer to secure appointments as a co-trustee and/or estate counsel. In your own situation, ask why, for example, a family friend or perhaps the principal income beneficiary was not appointed as a co-trustee; or why your will/trust instrument omitted a ‘no fault’ executor/trustee removal clause, fee rate cap or prohibition against trustees/executors using trust/estate assets to defend themselves. Or ask why certain beneficiaries’ complaints (listed in the questionnaire) could not be anticipated and addressed by the drafting lawyer! In sum, putting control of family assets into corporate (read profit-making) hands and/or their compensated ‘affiliated’ counsel without the inclusion of protective provisions in the will/trust instrument creates potential for abuse. Is it a wonderment that beneficiaries often voice legitimate complaints, only to discover that redress through ‘bank-friendly’ courts administering state statutes drafted by and for the banks is usually not practical? Heirs[®] would argue that the prosecution of collusive conduct in the drafting and administration of wills/trusts will encourage transparency on the part of drafting lawyers and administration and ultimately enable beneficiaries to better enjoy their legacies. Heirs[®] would also argue that **beneficiaries’ problems are ultimately traceable to – or at least aggravated by – what appears to be collusive relationships within the trust/estate industry. And that’s the one issue which will put reform in trust/estate administration on the regulators’ radar screens at the local and federal levels!**

What Relief Can You Expect From Regulatory Authorities?

Your responses to this questionnaire may well persuade local and U.S. attorney generals to focus their attention on the administration of private trusts/estates. The attorney general(s) might well spearhead the development of new case law and/or legislation and even support the interests of individual beneficiaries, especially those who have been involved in litigation seeking compensatory or punitive damages. In any event, certainly their involvement can help to shift the legal playing field significantly in favor of beneficiaries.

For what it’s worth, Heirs[®] can speculate as to what form remedial measures might take. For example, suppose a corporate executor/trustee battling a removal action was required to show that it was the well-founded and documented intent of the settlor to omit a ‘no-fault’ removal clause in the will/trust instrument. Or suppose a corporate trustee could be charged with breach of fiduciary duty simply because it routinely spread its legal work among numerous local firms in order to co-opt their services to beneficiaries? Or again suppose that the substantial (and locally uniform) increase in corporate fee rates over the years, an increase presumably not justified by a corresponding increase in administration costs, could be construed as presumptive evidence of price fixing within local markets? But no matter what specific remedies might be forthcoming, it is clear that beneficiaries can only benefit if we can convince the attorney generals at local and national levels that there is not only a problem but that we need their help now.

Heirs[®] has recently sent its members a questionnaire designed to determine whether corporate and individual trustees/executors are doing a good job or not. If you would like to participate in this survey and later receive a tabulation of the results (free), simply contact Heirs[®] at (610) 525-4442 or write c/o Heirs[®] / PO Box 292 / Villanova, PA 10985. A letter further explaining its purpose is reprinted below.

DISCLAIMER: HEIRS[®] is a support group primarily for beneficiaries and creators of irrevocable trusts and estates. It offers practical suggestions to those who want to improve relationships with their trustees/executors and to others who may be contemplating setting up a trust using a corporate entity such as a bank or individual (e.g. a lawyer) as the fiduciary. However, it cannot guarantee that its suggestions will be effective in a particular situation. Further, it is not qualified to offer legal, tax or estate planning services and will not do so. (For legal assistance, see a lawyer that is a specialist in trust/estate matters.)

SURVEY OF TRUST/ESTATE ADMINISTRATIVE PRACTICES

Notes:

a) If you are involved with more than one trust or estate, you may fill out a separate form for each.

b) Are you a beneficiary of an estate? beneficiary of a trust (vested remainder interest)? beneficiary of a trust (income interest)? creator of a trust? settlor of an estate? (Circle one or more.) Note: a 'settlor' is any individual who funds his/her own estate/trust.

c) Is the settlor deceased?

Yes

No

d) If your estate has settled or your trust has or is about to terminate, it is still urged that you return this questionnaire.

e) **If the settlor is deceased, you may answer questions addressed to settlors if you are able to do so. Otherwise, simply check "I'm Unsure : N/A".**

How Are Executors/Trustees Appointed?

- | | | | |
|--|-------------------|------------------|--------------------------------|
| 1. Did the bank (or other corporate trustee) suggest a particular lawyer to the settlor to | | | |
| a. draft his (your) will? | <u>28%</u>
Yes | <u>54%</u>
No | <u>18%</u>
I'm Unsure : N/A |
| b. serve as estate counsel (if different from the drafting lawyer)? | <u>28%</u>
Yes | <u>50%</u>
No | <u>22%</u>
I'm Unsure : N/A |
| c. serve as a co-trustee? | <u>24%</u>
Yes | <u>61%</u>
No | <u>15%</u>
I'm Unsure : N/A |
| d. serve as a co-executor? | <u>22%</u>
Yes | <u>60%</u>
No | <u>18%</u>
I'm Unsure : N/A |
| (Note: A corporate trustee/executor may be a bank or an independent trust company.) | | | |
| 2. Did the corporate executor or the drafting lawyer advise the beneficiaries that they could recommend but not appoint their own estate counsel if needed? | | | |
| a. corporate trustee? | <u>7%</u>
Yes | <u>71%</u>
No | <u>21%</u>
I'm Unsure : N/A |
| b. drafting lawyer? | <u>7%</u>
Yes | <u>70%</u>
No | <u>23%</u>
I'm Unsure : N/A |
| 3. If your estate was represented by estate counsel, was he/she | | | |
| a. recommended by the settlor? | <u>41%</u>
Yes | <u>29%</u>
No | <u>29%</u>
I'm Unsure : N/A |
| b. recommended by the beneficiaries? | <u>13%</u>
Yes | <u>63%</u>
No | <u>25%</u>
I'm Unsure : N/A |
| c. appointed by a corporate executor without participation of the beneficiaries? | <u>17%</u>
Yes | <u>55%</u>
No | <u>29%</u>
I'm Unsure : N/A |
| 4. Did the drafting lawyer suggest to the settlor the advisability of appointing a family member, friend or a principal income beneficiary as a co-trustee | | | |
| a. with joint signatory authority over the trust assets? | <u>33%</u>
Yes | <u>41%</u>
No | <u>26%</u>
I'm Unsure : N/A |
| b. without joint signatory authority over the trust assets? | <u>20%</u>
Yes | <u>51%</u>
No | <u>29%</u>
I'm Unsure : N/A |
| 5. Did the drafting lawyer suggest to the settlor the option of appointing a so-called 'trust protector' to handle specific issues such as trustee removal, investments, etc.? | <u>2%</u>
Yes | <u>72%</u>
No | <u>26%</u>
I'm Unsure : N/A |
| 6. Was the drafting lawyer of the will/trust instrument actually appointed a co-executor, co-trustee or estate counsel? (Circle one or more.) | <u>43%</u>
Yes | <u>50%</u>
No | <u>7%</u>
I'm Unsure : N/A |
| 7. Did a lawyer <u>employed</u> by a corporate trustee/executor draft your will/trust? | <u>22%</u>
Yes | <u>64%</u>
No | <u>14%</u>
I'm Unsure : N/A |

8. Did the drafting lawyer point out that
- | | | | |
|---|-------------------|------------------|--------------------------------|
| a. a revocable trust will automatically turn irrevocable at the settlor's death (thus locking beneficiaries into its designated trustee(s)/executor(s)) unless revoked prior to death by the settlor or otherwise vacated by language in the will/trust instrument? | <u>20%</u>
Yes | <u>45%</u>
No | <u>35%</u>
I'm Unsure : N/A |
| b. a revocable trust not specifically identified as such may well be considered irrevocable? | <u>10%</u>
Yes | <u>48%</u>
No | <u>43%</u>
I'm Unsure : N/A |

Possible Conflicting Interests Initially Disclosed?

9. If the drafting lawyer recommended a particular corporate trustee/executor to you as a settlor,
- | | | | |
|--|-------------------|------------------|--------------------------------|
| a. did he disclose any prior business dealings with that corporate trustee/executor without prompting? | <u>7%</u>
Yes | <u>47%</u>
No | <u>46%</u>
I'm Unsure : N/A |
| b. if disclosed, were such business dealings related or unrelated to trustee/estate matters? (Circle one.) | <u>16%</u>
Yes | <u>27%</u>
No | <u>57%</u>
I'm Unsure : N/A |
| c. if disclosed, did both obtain a waiver from the settlor? | <u>3%</u>
Yes | <u>40%</u>
No | <u>56%</u>
I'm Unsure : N/A |
10. If a corporate trustee/executor recommended a particular lawyer to draft your will/trust instrument
- | | | | |
|--|-------------------|------------------|--------------------------------|
| a. did he disclose any prior business dealings with that lawyer? | <u>5%</u>
Yes | <u>40%</u>
No | <u>55%</u>
I'm Unsure : N/A |
| b. if disclosed, were same related or unrelated to trust/estate matters? (Circle one.) | <u>11%</u>
Yes | <u>24%</u>
No | <u>63%</u>
I'm Unsure : N/A |
| c. if disclosed, did one or both obtain a waiver from the settlor? | <u>3%</u>
Yes | <u>33%</u>
No | <u>64%</u>
I'm Unsure : N/A |
11. Do you believe that your interests were compromised because of a tacit agreement between your corporate executor/trustee and your drafting lawyer (or your estate counsel) to support each others interests? (Circle one or both.) If yes, why? _____
- | | | | |
|--|-------------------|------------------|--------------------------------|
| | <u>55%</u>
Yes | <u>30%</u>
No | <u>15%</u>
I'm Unsure : N/A |
|--|-------------------|------------------|--------------------------------|
12. Did the drafting lawyer/corporate trustee explain to the settlor and/or his principal beneficiaries the responsibilities of a fiduciary including absolute loyalty to the beneficiaries (impartial administration, right to material information, etc.) and the remedies available should the trustee/executor breach his fiduciary duties? (Note: a fiduciary is a person with a legal duty to act primarily for the benefit of another.)
- | | | | |
|-----------------------|-------------------|------------------|--------------------------------|
| a. drafting lawyer? | <u>11%</u>
Yes | <u>57%</u>
No | <u>32%</u>
I'm Unsure : N/A |
| b. corporate trustee? | <u>7%</u>
Yes | <u>57%</u>
No | <u>36%</u>
I'm Unsure : N/A |
13. Did estate counsel initially define and explain his responsibilities to the trustee(s), the executor(s), and the principal beneficiaries themselves to your satisfaction
- | | | | |
|----------------------|-------------------|------------------|--------------------------------|
| a. as a settlor? | <u>14%</u>
Yes | <u>44%</u>
No | <u>42%</u>
I'm Unsure : N/A |
| b. as a beneficiary? | <u>13%</u>
Yes | <u>62%</u>
No | <u>25%</u>
I'm Unsure : N/A |

Disclosure of Corporate Administration Practices

14. Did the drafting lawyer initially disclose to the settlor that, for example,
- | | | | |
|--|------------------|------------------|--------------------------------|
| a. trustee fees charged by <u>local</u> corporate trustees are relatively uniform and/or increase regularly every 2-3 years (which may make it difficult to avoid a fee hike simply by changing trustees)? | <u>0%</u>
Yes | <u>56%</u>
No | <u>44%</u>
I'm Unsure : N/A |
|--|------------------|------------------|--------------------------------|

b.	a corporate trustee will insist on a fee based on a percentage of portfolio market value rather than on actual investment performance?	<u>23%</u> Yes	<u>42%</u> No	<u>35%</u> I'm Unsure : N/A
c.	an executor/trustee will typically resist removal at significant cost to the trust/estate and the beneficiaries' pocketbook unless provision for at least a 'no-fault' removal clause is included in the will/trust instrument?	<u>16%</u> Yes	<u>47%</u> No	<u>38%</u> I'm Unsure : N/A
d.	a corporate trustee will follow its own investment agenda (including use of proprietary mutual funds) rather than employing a lower cost, higher performance index fund (eg. a growth equity fund)? (Note: now distributions often can be funded at the trustee's discretion by both income and principal as authorized under new 'total return'/'power to adjust' statutes).	<u>24%</u> Yes	<u>46%</u> No	<u>29%</u> I'm Unsure : N/A

Absence/Inclusion Of Specific Protective Provisions In The Will/Trust Instrument

15.	Does the will/trust instrument include			
a.	a 'no fault' trustee/executor removal clause?	<u>8%</u> Yes	<u>88%</u> No	<u>8%</u> I'm Unsure : N/A
b.	an unconditional fee rate cap?	<u>2%</u> Yes	<u>92%</u> No	<u>6%</u> I'm Unsure : N/A
c.	a fee rate that scales up but only with a rise in documentable administrative expenses?	<u>2%</u> Yes	<u>88%</u> No	<u>10%</u> I'm Unsure : N/A
d.	a provision prohibiting use of trust/estate assets by trustees/executors to pay their own legal expenses, etc. without the prior permission of the adult beneficiary?	<u>8%</u> Yes	<u>80%</u> No	<u>12%</u> I'm Unsure : N/A
e.	provisions specifically defining what constitutes an 'unusual' or 'extraordinary service' and the basis for calculating any associated cost to the trust/estate?	<u>0%</u> Yes	<u>90%</u> No	<u>10%</u> I'm Unsure : N/A
16.	Once the trust has 'terminated' as defined by the will/trust instrument), does the latter contain provisions			
a.	generally guaranteeing distribution of the trust assets to the remainder interests within 60 business days?	<u>7%</u> Yes	<u>76%</u> No	<u>18%</u> I'm Unsure : N/A
b.	barring the charging of a termination fee?	<u>4%</u> Yes	<u>78%</u> No	<u>19%</u> I'm Unsure : N/A
c.	barring a request for a release or accounting not requested by the adult beneficiaries?	<u>0%</u> Yes	<u>77%</u> No	<u>23%</u> I'm Unsure : N/A
17.	Does the will/trust instrument allow the beneficiaries to change the trust situs (as, for example, to NV to minimize taxes) regardless of the location of a corporate trustee or domicile of the settlor at death?	<u>0%</u> Yes	<u>90%</u> No	<u>10%</u> I'm Unsure : N/A
18.	Does the will/trust instrument restrict a change in corporate trustee to local banks and/or those a certain minimum size thus limiting the ability of a beneficiary to secure better, more cost-effective administration?	<u>31%</u> Yes	<u>49%</u> No	<u>20%</u> I'm Unsure : N/A

Who Represented The Trustee/Executor In The Event Of Litigation?

19.	In the event of a dispute between the beneficiaries and a trustee/executor perhaps involving an accounting/settlement, was the trustee/executor represented by the drafting lawyer?	<u>22%</u> Yes	<u>48%</u> No	<u>30%</u> I'm Unsure : N/A
20.	At the onset of actual litigation (if any), is (or was) counsel for the executor/trustee the same lawyer that drafted the will/trust instrument?	<u>21%</u> Yes	<u>47%</u> No	<u>32%</u> I'm Unsure : N/A

21. At the onset of litigation (if any), did estate counsel or the drafting lawyer			
a. continue to serve both as estate counsel and counsel to the executor/trustee for a period of time?	<u>31%</u> Yes	<u>24%</u> No	<u>45%</u> I'm Unsure : N/A
b. declare it had a conflict of interest because it had previously represented the self same corporate trustee/executor in trust/estate matters?	<u>5%</u> Yes	<u>49%</u> No	<u>46%</u> I'm Unsure : N/A
c. step aside promptly?	<u>5%</u> Yes	<u>44%</u> No	<u>51%</u> I'm Unsure : N/A

Listing Possible Examples Of Beneficiaries' Complaints

22. Have you complained but failed to get an executor/trustee to take action or compromise concerning			
a. a refusal to resign as executor/trustee at the request of the adult beneficiaries without imposing additional costs (eg. a transfer fee), demanding that the trust/estate finance a court accounting or requiring a release? (Circle one or more.)	<u>59%</u> Yes	<u>31%</u> No	<u>10%</u> I'm Unsure : N/A
b. his refusal to resign promptly <u>despite</u> the availability of a removal clause?	<u>29%</u> Yes	<u>44%</u> No	<u>27%</u> I'm Unsure : N/A
c. his refusal to resign promptly without a release from the beneficiaries?	<u>21%</u> Yes	<u>28%</u> No	<u>26%</u> I'm Unsure : N/A
d. the unilateral conversion of common trust funds and/or an individual portfolio into more costly and perhaps lackluster <u>proprietary</u> mutual funds?	<u>58%</u> Yes	<u>21%</u> No	<u>21%</u> I'm Unsure : N/A
e. failure to award full credit for all proprietary mutual fund costs at the account level?	<u>27%</u> Yes	<u>27%</u> No	<u>46%</u> I'm Unsure : N/A
f. failure to award interest on rebated proprietary fund costs?	<u>24%</u> Yes	<u>33%</u> No	<u>43%</u> I'm Unsure : N/A
g. his refusal to substitute a lower cost equity/fixed income index fund for an individual portfolio (or common trust fund) which has consistently failed to beat standard indices with cost savings passed on to the beneficiary?	<u>43%</u> Yes	<u>26%</u> No	<u>21%</u> I'm Unsure : N/A
h. an investment strategy that fail to balance income vs. remainder interests (growth vs. income)?	<u>58%</u> Yes	<u>28%</u> No	<u>14%</u> I'm Unsure : N/A
i. his refusal to document a rationale for specific investments?	<u>68%</u> Yes	<u>23%</u> No	<u>9%</u> I'm Unsure : N/A
j. his failure to disclose the identity/concentration or specific securities held by a common trust fund and/or proprietary mutual fund despite the fact that this is material information?	<u>33%</u> Yes	<u>47%</u> No	<u>20%</u> I'm Unsure : N/A
k. unusual investments (eg. foreclosed mortgages, real estate transactions) without prior disclosure to and/or consent of the beneficiaries?	<u>17%</u> Yes	<u>62%</u> No	<u>21%</u> I'm Unsure : N/A
l. liquidating investments without regard to tax consequences?	<u>47%</u> Yes	<u>33%</u> No	<u>20%</u> I'm Unsure : N/A
m. his failure to periodically meet with the beneficiaries in order to delineate/revise trust objectives as they relate to the reasonable needs/expectations of the beneficiaries?	<u>57%</u> Yes	<u>34%</u> No	<u>9%</u> I'm Unsure : N/A

n.	failure to disclose his intentions prior to obtaining court orders/accountings or to advise the beneficiaries of their right to object?	<u>38%</u> Yes	<u>33%</u> No	<u>30%</u> I'm Unsure : N/A
o.	his demand that a beneficiary reveal tax records or other personal financial data prior to making a distribution where there is statutory authorization to do so? without such authorization? (Circle one.)	<u>23%</u> Yes	<u>45%</u> No	<u>33%</u> I'm Unsure : N/A
p.	his failure to provide material information in a timely manner – eg. copy of the will? trust instrument? fee agreement with settlor? estate/trust corporate policy manual? computation of capital gains on its common trust funds? actual costs of proprietary mutual funds? other? _____ (Circle one or more.)	<u>48%</u> Yes	<u>38%</u> No	<u>14%</u> I'm Unsure : N/A
q.	trustee/executor fees excess of limits imposed by a fee agreement with the settlor?	<u>23%</u> Yes	<u>36%</u> No	<u>41%</u> I'm Unsure : N/A
r.	trustee/executor fees exceeding statutory limits?	<u>16%</u> Yes	<u>34%</u> No	<u>50%</u> I'm Unsure : N/A
s.	its refusal to negotiate a fee agreement with the beneficiary(ies)?	<u>40%</u> Yes	<u>31%</u> No	<u>29%</u> I'm Unsure : N/A
t.	his failure initially to negotiate a fee agreement with the beneficiaries in the event the will/trust instrument was silent on the issue?	<u>37%</u> Yes	<u>29%</u> No	<u>34%</u> I'm Unsure : N/A
u.	increasing trustee fee rates with no associated enhancements in service, accountability or investment performance?	<u>62%</u> Yes	<u>20%</u> No	<u>18%</u> I'm Unsure : N/A
v.	charging for 'special or unusual' services without the prior approval of the adult income beneficiaries?	<u>50%</u> Yes	<u>25%</u> No	<u>25%</u> I'm Unsure : N/A
w.	charging the trust/estate for legal fees incurred in defending <u>its own</u> interests in the event of a beneficiary's request for an accounting or lawsuit without the prior approval of the adult income beneficiaries?	<u>47%</u> Yes	<u>33%</u> No	<u>21%</u> I'm Unsure : N/A
x.	charging the trust/estate for legal fees in connection with his demand for an <u>unwanted</u> accounting?	<u>17%</u> Yes	<u>56%</u> No	<u>27%</u> I'm Unsure : N/A
y.	charging the trust/estate for legal research requested (not requested) by the beneficiaries where same is believed material to proper administration of the trust/estate? (Circle one.)	<u>29%</u> Yes	<u>41%</u> No	<u>29%</u> I'm Unsure : N/A
z.	the trust's purchase of an insurance policy from the bank's own insurance agency?	<u>12%</u> Yes	<u>57%</u> No	<u>21%</u> I'm Unsure : N/A
aa.	paying inflated brokerage fees in return for 'free' investment research?	<u>12%</u> Yes	<u>45%</u> No	<u>43%</u> I'm Unsure : N/A
bb.	his failure to make needed income/principal distributions as authorized by the trust instrument or recent state 'total return' and/or 'power to adjust' rules?	<u>41%</u> Yes	<u>34%</u> No	<u>25%</u> I'm Unsure : N/A
cc.	his failure to administer according to the terms of the will/trust instrument (or 'settlor's intent') without first reaching an accommodation with at least the adult income beneficiaries?	<u>50%</u> Yes	<u>24%</u> No	<u>26%</u> I'm Unsure : N/A
dd.	the fact that it was your understanding that a drafting lawyer serving as a co-trustee would represent the beneficiaries' rather than the trustees' interests?	<u>26%</u> Yes	<u>36%</u> No	<u>38%</u> I'm Unsure : N/A

23. Would you like to identify any other particular conduct of your trustee, executor or estate counsel which could suggest breach of fiduciary duty including misrepresentations, failure to release material information, injudicious investments, negligence or even self-dealing? (Note: A self-dealing transaction is one in which a fiduciary uses or obtains property held in his or her fiduciary capacity for his or her own benefit.) _____	<u>61%</u> Yes	<u>39%</u> No	<u>0%</u> I'm Unsure : N/A
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Relationships

24. Are you generally satisfied with the administration of your trust/estate?	<u>15%</u> Yes	<u>83%</u> No	<u>2%</u> I'm Unsure : N/A
25. What is it that you like most about the manner in which your trust/estate is administered? _____	<u>19%</u> (3) Yes	<u>37%</u> (6) No	<u>44%</u> (7) I'm Unsure : N/A
26. Drawing from the above list in question #22, indicate by letter the three complaints which are of greatest concern.	_____ (1)	_____ (2)	_____ (3)
27. If the relationship with your trustee/executor became adversarial, did the trustee/executor indicate it might			
a. charge the trust/estate for its legal costs?	<u>51%</u> Yes	<u>30%</u> No	<u>19%</u> I'm Unsure : N/A
b. withhold a distribution?	<u>37%</u> Yes	<u>17%</u> No	<u>46%</u> I'm Unsure : N/A
c. other: _____			
28. Have you ever requested a court accounting?	<u>26%</u> Yes	<u>68%</u> No	<u>6%</u> I'm Unsure : N/A
29. If so, what was the reason? Explain: _____	<u>38%</u> Yes	<u>15%</u> No	<u>46%</u> I'm Unsure : N/A
30. Have your <u>personal</u> legal fees in dealing with your complaint or associated lawsuit (if any) been paid (or you expect will be paid) from the trust/estate?	<u>20%</u> Yes	<u>65%</u> No	<u>15%</u> I'm Unsure : N/A
31. Which of the following adjectives best describes your relationship as a beneficiary with your executor/trustee? (Circle one.)			
a. will do almost anything I ask	1%		
b. generally cooperative and responsive to my questions	8%		
c. usually friendly but not always willing to listen – but will compromise on occasion	14%		
d. will sometimes grant a reasonable request but not without a fight and usually not promptly	17%		
e. generally arrogant/stubborn and non-communicative	57%		

What Did You Do About Your Complaints?

32. Have you seriously considered petitioning the court to terminate your trust presuming that a satisfactory arrangement could be worked out first with the remainder interests?	<u>63%</u> Yes	<u>30%</u> No	<u>7%</u> I'm Unsure : N/A
33. Have you already filed a lawsuit seeking damages and/or the removal of your executor/trustee? (Circle one or both.)	<u>34%</u> Yes	<u>61%</u> No	<u>5%</u> I'm Unsure : N/A
34. Do you seriously intend to file a lawsuit seeking damages and/or the removal of your executor/trustee? (Circle one or both.)	<u>25%</u> Yes	<u>49%</u> No	<u>26%</u> I'm Unsure : N/A

35. If you have complained to a governmental authority other than a court, to whom did you complain (circle one or both): local state attorney general? US Attorney General? SEC? OCC (Office of the Comptroller of the Currency)? Federal Reserve? (Circle all that apply.)	<u>43%</u> Yes	<u>57%</u> No	
36. If you have complained to a governmental authority, what did they do to help you settle your complaint against the trustee/executor: No action to date? Took action but without a satisfactory result? Took action leading to a satisfactory result? (Circle one.)	<u>37%</u> Yes	<u>56%</u> No	
37. If you are dissatisfied with an executor/trustee and that individual is a lawyer, have you complained to your local lawyer's disciplinary board?	<u>7%</u> Yes	<u>66%</u> No	<u>28%</u> I'm Unsure : N/A
38. If you have not filed a lawsuit for damages and/or removal against an individual or corporate trustee/executor, why not?			
a. my trust lacked a trustee/executor removal clause	<u>58%</u> Yes	<u>17%</u> No	<u>25%</u> I'm Unsure : N/A
b. could not locate a competent law firm with the necessary expertise that was not legally conflicted due to having previously represented the (targeted) corporate trustee?	<u>60%</u> Yes	<u>27%</u> No	<u>13%</u> I'm Unsure : N/A
c. believed that fair treatment by the court was not likely because it was believed that the law and court tend to favor corporate trustees.	<u>81%</u> Yes	<u>6%</u> No	<u>13%</u> I'm Unsure : N/A
d. lacked the resources or couldn't justify hiring counsel on an hourly basis; contingency arrangements not available.	<u>65%</u> Yes	<u>22%</u> No	<u>13%</u> I'm Unsure : N/A
e. recognized that filing against the trustee/executor in order to protect my interests would likely result in the trustee/executor and/or his counsel charging the trust/estate for legal costs incurred in their own defense.	<u>81%</u> Yes	<u>8%</u> No	<u>12%</u> I'm Unsure : N/A
f. was afraid to file because of prior uncompromising conduct of the trustee/executor and/or counsel for the trust/estate.	<u>64%</u> Yes	<u>23%</u> No	<u>13%</u> I'm Unsure : N/A
g. declined to file because did not want to jeopardize our 'relationship' with the trustee/executor by appearing to be confrontational.	<u>23%</u> Yes	<u>59%</u> No	<u>18%</u> I'm Unsure : N/A
h. other: _____ _____	<u>50%</u> Yes	<u>0%</u> No	<u>50%</u> I'm Unsure : N/A

What Are Your Opinions/Recommendations?

39. In your opinion, do you believe that conflicts of interest within the financial community			
a. prohibit or at least seriously compromise the ability of corporate executors/trustees, the trust/estate bar and/or financial/estate planners to render unbiased advice/counsel to settlors?	<u>83%</u> Yes	<u>5%</u> No	<u>12%</u> I'm Unsure : N/A
b. can lead to the drafting of wills/trust instruments that unreasonably favor executor's/trustee's rather than beneficiaries interests?	<u>78%</u> Yes	<u>5%</u> No	<u>18%</u> I'm Unsure : N/A
40. Do you believe that it would be in the public interest for state legislatures to grant jurisdiction and supervision over personal, non-charitable trusts to local state attorney generals? the U.S. Attorney General? (Circle one or both.)	<u>60%</u> Yes	<u>16%</u> No	<u>23%</u> I'm Unsure : N/A

41. Do you believe that the fiduciary activities of nationally chartered banks should be supervised by a regulator (OCC) which is funded by the banks and whose primary mission is to maintain their financial solvency?

32% 41% 27%
 Yes No I'm Unsure : N/A

Just Some Basic Information So We Can Properly Interpret Your Answers!

42. In what year did you start experiencing a serious problem with the administration of your trust or estate?

 Date I'm Unsure : N/A

43. Is the administrator about which you are complaining an individual trustee? A corporate trustee? individual executor? corporate executor? (Circle one.)

Ind. Trustee – 16% Ind. Executor – 11%
 Corp. Trustee – 61% Corp. Executor – 14%

44. What state governs (or governed) the administration of your estate/trust (ie. its 'legal situs')? (Note: Legal situs generally depends on the settlor's residence at death which may or may not be the location of the executor or trustee.)

 State

45. Is any beneficiary of the trust (or estate) a charity or non-profit organization? (Circle one if so.)

Charity – 2% Non-Profit – 4%
 Blank (none) – 94%

46. If you are a beneficiary of a trust, is the trust revocable (a so-called 'living trust')? irrevocable but set up before the settlor's death? irrevocable but set up at the settlor's death? (Circle one.)

Revocable – 0%
 Irr. / Before – 46%
 Irr. / At – 54%

47. Has your estate settled?

60% 30% 10%
 Yes No I'm Unsure : N/A

48. Has your trust terminated?

a. If yes, about how long did it take for the assets to be transferred?

 # Of Months

b. Was a release and/or accounting chargeable to the trust demanded? (Circle one or both.)

33% 29% 38%
 Yes No I'm Unsure : N/A

49. In what year was your trust/estate originally established?

 Date I'm Unsure : N/A

50. Are we authorized to share your completed questionnaire with your local attorney general, the U.S. Attorney General or other interested governmental authorities including the SEC?

76% 24% _____
 Yes No Initial

NOW THAT YOU HAVE TAKEN THE TIME TO COMPLETE THIS SURVEY, WHY NOT SEND A COPY TO YOUR LOCAL ATTORNEY GENERAL INCLUDING A BRIEF WRITE-UP OF YOUR OWN SITUATION? (SEE BELOW)

Please mail your questionnaire in the enclosed SASE **whether completed or not** to Heirs[®] Inc., Box 292, Villanova, PA 19085 not later than March __, 2006.

Your Name (Printed): _____ Your Name (Signature): _____
 Your Address / Phone Number / Email Address: _____
 Name of Bank Trustee (Important! Please do not omit!): _____ N/A

- I intend to contact the attorney general at local/federal levels as soon as possible. For his name/address, go to <http://www.usdoj.gov/contact-us.html> or call us at 610-525-4442.
- I also wish to contact my local state banking committee/commission. For his/her name/address/phone #, please call us at 610-525-4442.
- In the event there is an opportunity to testify in state/federal hearings on the need for reform in trust/estate administration, I would be available to speak.
- I wish to discuss this questionnaire with you before participating. (Call 610-525-4442.)

SPECIAL NOTICE

Conversion of bank managed individual portfolios/common trust funds into proprietary mutual funds is currently the subject of several class action suits. Issues include charging of 'sweep fees', exposure to capital gains taxes, failure to credit 'float' on funds awaiting distribution, conflicted administration, etc. If you would like to learn more and possibly serve as a 'lead plaintiff', call us at 610-525-4442.