

Submitted: December 2004

By Eileen Marie / PO Box 445 / Gates Mills, OH 44040

### A WELL KEPT SECRET

My terminally ill mother thought she was leaving me an inheritance when she signed a living trust. Instead, she left me a virtual death sentence when she appointed her bank and her accountant to be her co-executors and co-trustees. Two weeks after my mother's death in 1999, I learned I was the beneficiary of a multi-million dollar trust. I never received my inheritance. Worse, I have been left with a bottomless pit of legal fees. In fact, I was never in debt until I became a beneficiary.

This is possible because "the administration of a living trust is not supervised by any court. Persons who sign such a legal instrument need to know that the trustees they appoint will not be accountable to a judge for the honest and accurate distribution of assets, unless a beneficiary were to bring a lawsuit." (*What You Should Know About Living Trusts*, Ohio State Bar Association) A will is administered by an executor who is under the oversight and audit of Probate Court, and whose fees are set by state law. A trust is administered by trustees who oversee and audit themselves, and set their own fees which are deducted from the inheritance. If trustees commit unlawful acts, the one person who can right these wrongs, the benefactor, is dead.

My mother's living trust divided most of her assets among her four adult children, giving us each approximately one-quarter share with the exception of special bequests to me and to my siblings' children. I, also, was given her home, along with its contents. I received these additional amounts because my siblings had families and lucrative businesses that were independent of the family corporations. All I had were my jobs, which my mother protected through employment contracts with two of her corporations. Her attorney had created a trust to secure them; as long as it was in effect, if I were fired, I would receive half a million dollars immediately from the trustees.

After my father died in 1992, Tom Capone\* became my mother's accountant and arranged for her to move her trust to Erie National Bank\*. He took my mother and me to fine restaurants, along with his family. We had no reason to distrust him. Once my mother died, his attitude changed. He became evasive and belittling when I asked questions, denying me vital information and refusing to return phone calls.

Rather than giving the four siblings our equal shares, the trustees seized control of all the corporations and other businesses. Mr. Capone and the bank's trustee said we would have to "horse trade" for our inheritances. When "horse trading" occurs, the beneficiaries have to negotiate through bargaining and reciprocal concessions to get their inheritances. These actions change the terms of the trust, forcing the beneficiaries to grab as many assets as quickly as they can. Those with the most business acumen acquire almost everything, leaving some beneficiaries with less,

or, in my case, with nothing. The resulting warfare among the beneficiaries gives the trustees the excuse they need to hold onto the trust to continue collecting huge fees.

Since the trustees have changed the terms of the trust, it now becomes necessary for all the beneficiaries to sign a global settlement. The terms of the settlement make it impossible for all the beneficiaries to agree. This is exactly what the trustees want. It empowers them to blame the beneficiaries for not being able to close the trust.

I objected strongly to this action. I knew this was not what my mother wanted, expected, or paid her trustees to do. The trustees' duty was to respect my mother's wishes and intentions as stated in her trust. It was not their duty to make changes that favored certain beneficiaries who could enrich the trustees fees. Since I was the only sibling with no independent means, and no legal experience, I was completely cut out of the "horse trading." I lost everything. Tragically, "horse trading" pits sibling against sibling, allowing the trustees to destroy a family. This prevents the trustees' removal.

The trustees announced that because my mother was cash-poor, her best real estate parcels would have to be sold to pay estimated taxes. I was denied all proof of my mother being cash-poor. Sixteen months later, though, I learned from the Internal Revenue Service that the trustees had made a huge overpayment on these taxes. This resulted in a refund which the trustees naturally used to pay trust fees. The rents on these parcels would have guaranteed us inflation-protected income for the rest of our lives. Now these lucrative properties were gone forever.

When the trustees claimed the remaining commercial properties had to be sold, I was baffled. After all, the taxes were paid and the IRS audit was closed. The trustees moved ahead with their plan to evict the buildings' tenants, despite my pleas to give the tenants fair notice and to let me help them find new housing. Eventually the tenants went to the local newspaper, and the adverse publicity caused the potential unsecured buyer to cancel the deal. By this time, though, the trustees had already hired a demolition company to tear down what had once been good, affordable housing. Most of the vacant land that remained was purchased by one of the beneficiaries.

The trustees continued to cultivate discontent among the beneficiaries, thanks to "horse trading," the sale of assets, and a refusal to give a full and understandable accounting of the trust. The global settlements were making matters even worse, forcing us to hire personal attorneys, even though we were paying for those hired by the trustees. When a judge asked why it was taking so long to close the trust, one of the trustees' attorneys blamed us. He said there was nothing he or the trustees could do with "four such dysfunctional siblings."

I have learned that because trustees can set their own fees, there is no real incentive to close a trust. There is no incentive to be honest, either, because trustees use trust money to buy omissions and errors insurance. If trustees do get sued, it costs them nothing. This insurance was purchased after my mother died. Attorneys will insist that trustees have a fiduciary duty to close a trust, but the facts speak for themselves. The trust seminars I attended never discussed the estate fees, trustee fees, appraisal fees, re-appraisal fees, real estate fees, real estate commission fees, environmental study fees, demolition fees, auction fees, video recording fees, security guard fees, extraordinary fees, attorney fees, accountant fees, omissions and errors insurance fees, and bank insurance fees.

When trustees force a beneficiary to sue for an inheritance, it can be difficult to find legal help, and the fees are often prohibitive. Twenty prominent law firms told me they could not help me because Erie National had used them for trust matters. They explained that it would be almost impossible to find a competent attorney with the staff, the wherewithal, and the inclination to take on the trust department of a Fortune 500 behemoth, like Erie National, and a large accounting firm, both of whom are savvy contributors to judicial campaigns. If surmounting these challenges were not enough, consider the skills of trustees to create a mindfield of legal maneuvers to tie up a trust for years, destroying its assets. My mother's trustees directly and indirectly generated thirteen lawsuits involving eighteen law firms outside the bank. I was never able to determine how many millions I lost because the trustees made it impossible to trace funds. Laws give immunity to lawyers and trustees in administering trusts. This allows them to abuse their powers, and to discriminate against a beneficiary by denying the victim an inheritance.

Even though Erie National has more than 250 attorneys in its trust department, it hired the law firm that wrote the trust, to serve as legal counsel and advisor. I was told that this was standard procedure. Yet, the head of the law firm was my lawyer. Eventually I learned that without my knowledge, he took my mother as a client and revoked her will and the original trust executed by her trust attorney. Then he drafted a new will and a new trust. My own attorney destroyed the trust that protected my employment contracts and that gave me my mother's home free and clear of all expenses. Next he placed my entire inheritance in a bogus trust with a fictitious date of 1983 that never existed. He did this to conceal he had taken my mother as his client. Had he contacted me for the correct information regarding my own personal trust of 1984, he would have had to reveal what he had done. Under Ohio law, if a beneficiary does not have the correct trust that is to receive the inheritance, the beneficiary cannot get the inheritance. Since I could not produce a 1983 trust, the trustees asked a court to decide who should receive my inheritance. Should it be a non-human beneficiary of a bogus trust they named Sue, or should it be me, the living, breathing

daughter with a 20-year-old legitimate trust? When I went to court, Sue had her own attorney, who noted Sue's presence by pointing to a vacant chair. She was a ghost who might get my inheritance. I held my head in my hands and pondered what my mother would say about how her trustees were spending her money and administering her trust. I naturally had to hire an attorney to represent me at a cost of tens of thousands of dollars, in addition to the thousands I had to pay the trustees and all their lawyers to sue me with my own money. Even though Probate Court ruled that Sue, the ghost, could not have my inheritance, the Court lacked jurisdiction to make the trustees give me my full and rightful inheritance. By suing me in Probate, instead of Civil Court, the trustees denied me my right to a jury of my peers. My legal fees and the sale of assets of my quarter share have greatly diminished my inheritance. Sadly, the trustees can keep what remains of my inheritance since I can no longer afford to sue them for it. My siblings have received distributions, had some of their legal fees paid by the trust, and they purchased my parents' corporations and real estate at favorable prices.

Why did I get singled out? I questioned why the trustees hired my law firm to represent them. They answered by stripping me of all my corporate officer positions and my check-signing rights. Then they fired me from the positions I held for over twenty-five years in my mother's two corporations, giving the jobs to my siblings and my lawyer's law firm. When I showed the trustees my employment contracts, they said the original trust that protected those contracts had been revoked. Supported by two of my siblings, the trustees sued me over the validity of the contracts, demanding I reimburse the corporations for past wages.

I hired a new attorney, asking him to reinstate my employment contracts and fight for my inheritance. Unfortunately, he quickly saw the financial potential of this legal quagmire. Every month he sent me incomprehensible bills, which he kept telling me to ignore, because he said my employment contracts entitled me to legal fees. I could not eat, think, or sleep -- I had never owed anyone such a huge sum of money.

When I finally insisted he explain his bills or I would find legal help elsewhere, he made me an offer. In exchange for paying his six-figure bill with no questions asked, he would try to get me an inheritance that would at least be enough to cover his legal fees. If I refused, he would drop me as a client and I would owe the full amount immediately. I fired him, not understanding I had a court hearing on my employment contracts a few days later. That is when I learned my attorney never even prepared for my case.

I arrived at court to find my former attorney there, along with the trustees' attorney. They met in the judge's chambers, while I waited anxiously outside. When I was finally called before the judge, he told me that if I did not rehire my attorney, I would have only thirty days to find a new one.

I had no way of knowing the implications of his statement. All I knew was that my former attorney had harmed me greatly and it would be foolish to rehire him. It was only when I began looking for another attorney that I understood the judge's warning. The decent, competent attorney who tried to help me, although he did his best, had little time to prepare my case. Meanwhile, the attorney I fired wasted no time in suing me. I had to settle because I could not afford the cost to go through a trial.

As fate would have it, my new hearing date was September 11, 2001. I was in court when the terrorists struck. The courthouse was evacuated as a precaution. Under such extraordinary circumstances, I had no time to read what I was told to sign. Consequently, I incurred huge losses in a settlement agreement.

I also never received my mother's home. The trustees ordered me to make improvements and pay the contractors, promising to reimburse me and give me the deed. After the work was completed, they informed me the trust had been reinterpreted. I would no longer be reimbursed for my expenditures, nor would I receive the deed. The trustees sold my mother's home for less than half the appraised value and took the proceeds to cover questionable expenses over which I had neither knowledge nor control.

People get very literal about a trust. They think that anything written in a trust by an attorney must be trustworthy and that trustees are held accountable by the courts. A trust is only as trustworthy and legally sound as the ability and the integrity of the attorneys who write it and the trustees who administer it. What parents want their trustees to sue their children, sell their corporations and other assets to favored buyers at bargain prices, and destroy their family and their legacy? My mother left me a loving inheritance to guarantee me security for the rest of my life. She counted on her trustees to honor their fiduciary duties to her and to her family. She expected them to treat her children fairly and equally. Instead, my family has been destroyed and I have not received one dime of my inheritance. My retirement savings are gone due to legal fees. I have neither the capability nor the time to replace it.

If the trustees and the lawyers had professional ethics, I would not have had to go to any attorney. I would be gainfully employed. I would have my inheritance. I would have shared in a lifetime of inflation protected benefits from multi-million dollar corporations. Just as my siblings and I planned a funeral together as a family, we could have continued as a family. After all, there were more corporations to manage than there were the four of us.

The only way to guarantee a trust will work is to make the trustee and the beneficiary the same person. People will not take from themselves what belongs to them.

My parents had only eight years of schooling between them, yet they epitomized the American Dream. My father often told me how he arrived at Ellis Island in 1921, carrying his mother's hand-woven red and green blanket and wearing his father's pocket watch. He was sixteen, alone, and could not speak a word of English. Five years later, he married my mother. She was as determined as my dad to rise above a childhood of poverty and deprivation. One day a salesman came to my parents' home to sell a franchise for an electric motor mole. My father used his pocket watch as collateral to buy a twenty-five year franchise on a machine that revolutionized the sewer cleaning business. It was this opportunity that paved the way for my parents' success, and took them into the worldwide arena. They worked side by side for sixty-seven years, overseeing their corporations.

When I had to sell my car, and other personal possessions, along with the contents of my parents' home to help pay my legal bills, I decided to keep my dad's red and green blanket and my mother's rings. The blanket has a vibrant pattern that reminds me of my dad's strength and determination. When I look at the shining diamonds in my mother's rings, I remember a woman whose light guided and protected her family.

Some days, when I think my heart is broken beyond repair, I reflect upon all that my parents went through to leave a legacy for the generations that followed. The destruction of that legacy is a burden I bear every day. The memorial fund I created in my parents' names to help terminally ill children and the fund I had for inner-city youth have ended. I know my parents would want me to tell this story to keep others from falling prey to such a death sentence.

Attorneys, accountants and banks may insist my story is rare, the exception, rather than the rule. When I started this long journey almost six years ago, other attorneys told me I would be better off just walking away from my inheritance. At the time I thought they were crazy. I could not understand how anyone would willingly turn their back on a multi-million-dollar inheritance. After what I have learned about trusts, and all I have suffered and lost, I know they were not crazy. They were just being honest about revealing a well kept secret.

\*Individual and company names have been changed.

Eileen Marie  
Copyright 2004