



ELDER LAW AND ESTATE PLANNING

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Successor trustee does not have authority to change terms of mother's trust

Question: My mother died a few months ago. She had a living trust leaving everything equally to me and my half-brother. He was named successor trustee, I assume because he lives in the States. I'm in the military, stationed in the Mideast. I've now learned that he's been distributing Mom's assets not per her wishes, but instead, giving himself a lot more, and keeping some assets, like mom's brokerage account, solely for himself. I reached him last week to ask about this. He said that as successor trustee he has the authority to make changes to the terms of her trust. That doesn't sound right to me. What can I do now, especially given the distance? I won't be home until late 2020.

Answer: A successor trustee does not ordinarily have the right to change the terms of the trust. Once your mother died, the trust became irrevocable. As successor trustee, your half-brother has a fiduciary duty to faithfully carry out the terms of the trust as written. Occasionally, a trust is written to allow a successor trustee to make changes to the trust terms. But that is unusual, and unlikely to be the case here.

In any event, you have rights as a beneficiary. You should do exactly what you would do if you were located Stateside:

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get a copy of the trust to determine if he has legal authority to change the terms. If he doesn't, which is probably the case, you can then inform him of that. Maybe your half-brother genuinely does not know his legal limitations and once you tell him, he'll set things right. But if he will not cooperate – either because he thinks you're wrong or is trying to pull a fast one – you may need to get help from an estate litigation lawyer. Hopefully it won't come to that. But if it does, we can provide you with further direction.

Joseph Karp and Jonathan Karp are Florida Elder Law and Estate Planning Attorneys. The Karp Law Firm is located in Palm Beach and St. Lucie counties. It assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration, estate litigation, and probate and elder law mediation.