

Knowing Whether You Are Being Denied Your Rightful Inheritance and What You Can Do About It.



Why Am I Being Denied My Rightful Inheritance?

There are a number of reasons a beneficiary may not be getting the inheritance they deserve. Some trustees, executors, and administrators have no idea what they're doing. Literally.

They don't get any type of professional help and may tell you they know what to do simply because mom or dad told them before they died. They ignore the will or trust and insist they will do the job on their own schedule, the way they were told. Your requests for information probably get ignored or you get threatened with disinheritance if you question their judgment, actions or failure to act. Don't be fooled or cowed. I'll show you how to successfully take on the ignorant trustee, executor, or administrator.

There are trustees, executors, and administrators who hide their heads in the sand, doing nothing, while keeping you from your inheritance. They "lock up" and don't do a thing to administer the trust or estate. Sometimes this happens because the emotional tie to your deceased loved one keeps getting triggered when they try to deal with the will or trust. Some accomplish nothing because they have bad follow-through. They were a poor choice to assign the task of probating the will or administering the trust. Nevertheless, they have the responsibility but won't act, and yet won't agree to resign so someone else can get the job done.

Sometimes their failure to do the work they took on leads to financial losses. Their failure to act is not an excuse; an executor or administrator who fails to act can be removed. A trustee who fails to act can be held financially responsible if they breached their duty to you, thereby reducing your inheritance.

Red Flags in Probate and Trust Administration

Some trustees, executor, or administrators only appear unwilling or unable to do their job. Some are unable. All are keeping you from the information you are entitled to get. Some are doing it so you won't realize they are benefiting themselves at your expense.

Red flags include:

- Unwilling or refusing to provide you with a copy of the trust or will
- An unwillingness to provide financial information
- The threat of disinheritance if you keep asking questions about your inheritance.

You may be dealing with a bully.

Keep reading to learn how to effectively deal with them.

Some trustees or executors inform you that you have been disinherited. The trust has been amended or a codicil to the will was created leaving you nothing. If you had a rocky relationship or were estranged from your mother or father then this may be true; you may in fact have been disinherited. In my experience parents are reluctant to write their children out of their wills and trusts.

This does happen if the relationship was badly strained or altogether lost, where there is a history of substance abuse, or where a child has been so reckless with money their parent believes it is pointless to give them anything more because it will just be lost or misspent.

Far more often a child has been disinherited because the trust or will was changed (or created when there was no estate plan) while their parent was suffering from some form of cognitive impairment such as dementia. Often in this situation there is one child living with their parent and/or is their caretaker or the child lives nearby and is managing their parent's health care and/or finances.

This child probably chose who would draft the new document (or did it themselves with some software or on the internet), transported their mother or father to the person who drafted the new document, and probably kept the document in their possession after it was created. Sometimes they do this after taking control of their parents' financial affairs by being appointed trustee of the trust or attorney in fact under a durable power of attorney.

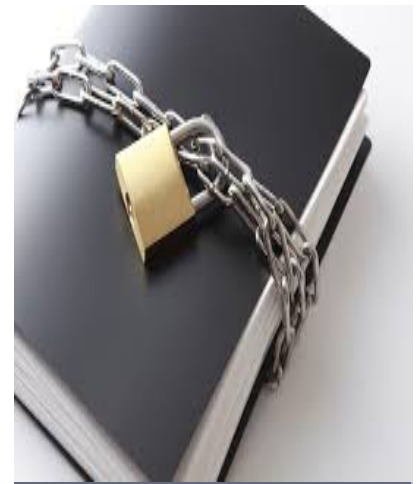


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~ Scott Grossman

Others wait to take control after their parent's death. In either case, they go from getting their proportionate share of the estate to (usually) getting the whole thing. Trusts, wills, trust amendments, and codicils procured under these circumstances can be set aside (i.e. "thrown out") by a probate court judge.

The person who is stopping you from inheriting may be your brother, sister, aunt, uncle, some other relative, or not related to you at all. It really doesn't matter what their relationship is to you or your deceased loved one.

Some trustees, executors, and administrators try to "pull rank." They will claim that because they are the decedent's _____ [fill in the relationship] that gives them the right to _____ [fill in whatever it is they are doing to keep you from your inheritance.] That's nonsense. California law doesn't allow a relative or friend to impose his or her own wishes on beneficiaries.



Know the signs!

What You Will Find Inside This Article:

- 1 Failure To Provide Copies of Documents
- 2 Failure To Account
- 3 The Document Is Fine But You Haven't Gotten Your Inheritance
- 4 The No Contest Clause Doesn't Matter
- 5 Removing The Trustee
- 6 Petition To Instruct The Trustee
- 7 Omitted Spouses and Children

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Getting a copy of the will or trust should be a simple matter. The will is supposed to be lodged with the superior court in the county where the decedent was living at the time of his or her death. The lodged will is a public record.

~ Scott Grossman



Getting a copy of the will or trust should be a simple matter. The will is supposed to be deposited with the superior court in the county where the decedent was living at the time of his or her death. The deposited will is a public record. If you want a copy then you or your attorney can go to court, look up the will, and obtain a copy. The executor or administrator of the probate estate is not required to provide a copy to the beneficiaries. Smart ones will provide copies in order to avoid a problem but not every executor or administrator is smart (or for that matter cooperative.) However, if someone other than the executor is in possession of the will, then that person (the custodian) is required to send a photocopy of the will to the nominated executor.

The trustee of the trust is required to provide a copy of the entire trust, as amended, upon written request to the heirs and beneficiaries of the person who created the trust. This means the trustee has to send a copy of the trust and its amendments. The trustee does not get to pick and choose what will be sent. Everyone mentioned in the trust who receives property from the trust (the beneficiaries) has a right to a copy. Blood relatives (e.g. children and grandchildren) have a right to receive a copy of the trust and its amendments even if they are not beneficiaries. Even if a child is disinherited he or she still has a right to a copy of the trust and its amendments.

Failure To Provide Copies of Documents



If a written request is made for a copy of the trust and its amendments and the trustee does not respond within 60 days, then the heir or beneficiary can have their attorney petition the probate court to compel the trustee to provide a copy of the trust.

I have yet to see a successful defense to this request as long as there is proof of the written request. If the court grants the order to provide a copy of the trust then the trustee may also have to pay the attorneys fees and court costs of the proceeding.



Failure To Account

Executors and administrators of probate estates are required to account at least annually to the beneficiaries of the probate estate. If the first year of the probate is coming to an end and the executor or administrator is not able to close the probate estate, then they have the option of filing a status report with the court.

If the status report asked for a relatively short period of time in which to conclude the administration of the probate then the probate court probably will not require an account be filed at that time. However, a beneficiary who is concerned that the executor or administrator is mishandling the assets of the probate estate may want to request that the court order the executor or administrator to provide an account. Under all circumstances, when the executor or administrator wants to close the probate estate an account will have to be filed, unless each and every beneficiary consents in writing to waive the account.

Trust accounts must be provided every year to the income beneficiaries of the trust estate. Under some circumstances, they may be necessary more frequently. Trust accounts are a window into how the trustee is administering the trust. When a trustee refuses to account or delays providing an account, this is a red flag that something may be wrong. Some trustees don't account because they are lazy. That's not good, but it is not necessarily a sign of financial danger. Some trustees refuse to account or promise an account that never gets produced. This can be an indication the trustee is mismanaging trust assets or is taking property to which they are not entitled. When a written demand is made for an annual account and none is produced, probate court judges are quite likely to grant the petition and instruct the trustee to account.

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For both probate and trusts, the beneficiaries should review the account and decide whether it's acceptable or objectionable. If there is a concern that assets are missing from the estate, money has been spent in an inappropriate way, the value of the assets have declined due to the ineptitude of the trustee, or money was distributed to the wrong people then you will want to file an objection to the account. Sometimes the account is just the starting point for further inquiry. It may be necessary to research real estate records to see when a property was sold, to whom, and for how much.

Bank records may need to be subpoenaed in order to review account statements and cancelled checks to see if money was used improperly. If you have any doubts at all about the propriety of the account produced then you must object to it to preserve your rights.

In the objection, you will point out what's been done wrong (to the extent you can identify it), and if the beneficiaries are getting less than they should, the amount the executor, administrator, or trustee should be surcharged in order to make the beneficiary whole. If the amount is unknown that's okay. You can always ask for an amount to be proven at trial.

The Document Is Fine But You Haven't Gotten Your Inheritance

One Family's Story

Debra's mother passed away. Over a decade before she died, Debra's mother Molly told her she had created a living trust that held all her assets. When Molly died a few items were to be given to a close friend, a niece, and a nephew but the large majority of her estate would be divided evenly between Molly and her brother Sam. When the trust was created Molly was in good health and in her right mind. Molly told Debra that Sam, as the oldest child, would be the trustee when Molly died. Debra knew her mother was capable of making her own decisions, the choices she made were reasonable, and the trust contained the terms her mother wanted. Molly told Debra where to find her trust when she died and that Sam would take care of everything.



For a year after her mother died Debra remained in communication with her brother. Their relationship had always been a little rocky but they managed to get along during this time. Her brother did nothing obviously wrong and Debra had little reason to be suspicious of his conduct. With the first anniversary of their mother's death having passed, Debra asked her brother when the trust assets were going to be distributed. She couldn't get a response. Debra

then asked for a copy of their mother's trust. Sam promised to send her a copy but never did. After asking several more times, Sam finally replied that he was owed some money by their mother. This came as a complete surprise to Debra. As far as she knew her mother was financially secure and didn't need any help. Debra became increasingly suspicious of her brother's motives. Finally, Sam told her that the entire trust estate would be going to him because their mother owed him a great deal more money than was in the trust.

Debra doubted her brother's story. She wanted to learn the truth and get her rightful inheritance. Debra had her attorney send a demand letter to Sam for a copy of their mother's trust. When he didn't produce it Debra sued Sam to obtain a copy. The court ordered Sam to give Debra a copy of the trust.

As Debra suspected, the trust in fact said exactly what Molly told her before she died. Debra then sued Sam for her half of the residuary trust estate. Sam again claimed he was owed more money by Molly than was in her trust. During discovery, bank records were subpoenaed and Sam was made to show all the documents that supported his claim. Sam couldn't prove he was owed any money at all. Molly's bank records showed she had made either gifts or loans to Sam during the two years preceding her death. Debra got a court order forcing Sam to immediately distribute her share.



Time is your enemy. If you suspect trouble the time to act is now.

~ Scott Grossman

The No Contest Clause Probably Doesn't Matter



Know Your Rights! Enforcing The Terms Of The Trust is Not A Trust Contest!

It is very important that you distinguish between challenging a will or trust and acting to make a trustee carry out the terms of the trust. If you are trying to enforce the terms of the trust, it is not a trust contest, and therefore the no contest clause won't be triggered. In other words, if you accept the terms of the trust and just want the trustee to do his or her job by carrying out the terms of the trust then your lawsuit against the trustee will not result in you getting disinherited.

It is not uncommon for trustees to make a false threat to use the no contest clause to disinherit you. Todd's experience is instructive. Todd was extremely upset with his sister Sally, the trustee. Two years had gone by since their mother's death and Sally had not distributed anything to Todd. Todd had no problem with his mother's trust. He believed it accurately reflected her wishes even though it left more property to Sally than Todd. Todd simply wanted what his mother had left him and it didn't appear Sally was ever going to get around to distributing the property to Todd unless somebody made her do it. Whenever Todd talked to Sally about a distribution he was told he would be disinherited under the no contest clause if he did anything.

Todd contacted us about what could be done. Todd's situation was clear cut. He wasn't challenging the trust, just the ineffective way his sister was administering it. We drafted a petition that, among other things, demanded Sally distribute Todd's share to him. Todd finally received his full inheritance. The same strategy would have worked if Todd was dealing with the executor of his mother's will.

A petition for removal makes the most sense if the trustee is supposed to remain in place for some extended period of time. An example of this would be where the trust does not call for the outright distribution of trust property. This can happen because the trust calls for distributions over staggered periods (e.g. one third of the trust assets at age 35, one half the remainder at age 40, and the remainder at age 45), is managing property for a minor child or is managing property for incompetent adults. Very commonly people want their trustee removed because they are angry at the trustee.

On a pragmatic level, trustee removal may not make sense if the trust calls for an outright distribution and what you want is the property distributed now. Trustee removal is another cause of action in addition to the distribution. In other words, it is yet one more thing you have to prove and one more thing for the court to decide. It often increases litigation costs and delays your case. This is usually an acceptable tradeoff if the trustee is supposed to manage the trust for an extended period of time, is causing losses due to poor management, or is stealing trust property. If you have proof of truly terrible conduct that endangers the trust property then you may be able to have the trustee suspended and a temporary trustee appointed while the removal petition is litigated.

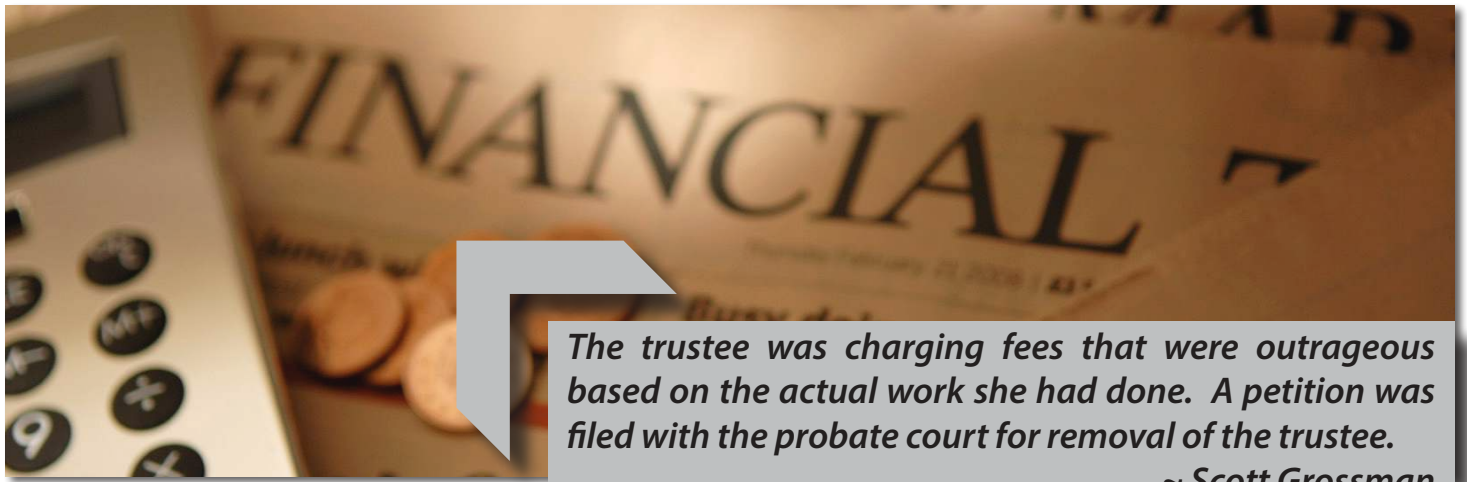
Jason and Stephanie's situation illustrates when petitioning to remove a trustee makes sense. Jason and Stephanie had lost both their parents. They knew their parents had created a revocable living trust and that the trust had been drafted by their parent's attorney.

They were surprised to learn that their parents had not chosen either of them to serve as the successor trustee, but rather a private fiduciary who had been suggested by their parents' attorney.

Jason and Stephanie both knew that their parents were perfectly competent and had made their own choices in setting up their trust. So, they had no reason to doubt the validity of the trust or the choices their parents had made. They simply wanted to see the terms of the trust carried out in a timely and efficient way. The trust divided the property into equal shares for the two of them and called for distributions to each of them of one third of their shares at age 25, one half the remainder at age 30, and the entire remainder at age 35.



Removing The Trustee



The trustee was charging fees that were outrageous based on the actual work she had done. A petition was filed with the probate court for removal of the trustee.

~ Scott Grossman

Unfortunately, Jason and Stephanie encountered one problem after the next. Calls to the trustee about the status of the trust administration went unreturned. Letters to the trustee about the status of the trust administration resulted in letters back that told them little about what was going on and gave them only a vague timeline of when trust administration would be completed. Trust income tax returns were filed late. When they finally were filed, it resulted in Jason and Stephanie both having to file amended personal income tax returns. Distributions based on their ages weren't made and requests for the distributions were ignored. After more than a year of this frustration, Jason and Stephanie had reached their limit and took action.

It was obvious the trustee had breached her fiduciary duties to both Jason and Stephanie. She hadn't consulted with either of them about the investment management of the trust assets even though she would be managing these assets on their behalf for years to come. She failed to communicate with them about nearly all the aspects of trust administration. She failed to make timely distributions to them even though they had both made written requests, as they were allowed to do under the trust, for distributions. The trustee was charging fees that were outrageous based on the actual work she had done. A petition was filed with the probate court for removal of the trustee. Their lawsuit ultimately resulted in the removal of the trustee, a reduction in the fees paid to her, and the appointment of Jason and Stephanie as co-trustees of their parents' trust.

Petition To Instruct The Trustee

Trustee removal is usually not an acceptable tradeoff if the goal is just to get the trustee to do his or her job and bring the trust administration to a close. A petition to instruct the trustee to perform a particular task often makes the most sense when the trust calls for an outright distribution. If you know what property the trust holds and you want your share distributed according to the terms of the trust then this can be the fastest, most effective remedy available.

Either type of petition requires going to the probate court. The trustee has the right to object to your petition. You can expect whatever trust you are dealing with will have language in it that says the trustee can use trust funds to hire an attorney to pay for the cost of any litigation. In my experience, every trustee who is able to use trust funds to pay for the cost of their defense will do so.

Omitted Spouses and Children

Omitted spouses and children find themselves in the unusual situation where the will or trust is correct as written but they are still being denied a rightful inheritance. A spouse is considered to be omitted, if at the time the will or trust was created, the testator or settlor was not married to the spouse. A child is considered to be omitted if at the time the will or trust was created the child was not yet born.



An omitted spouse does not have to challenge the will or trust in order to obtain an inheritance. Instead, the omitted spouse files a petition with the probate court making the claim to have been omitted from the will or trust. If the omitted spouse can prove that he or she was married to the testator or settlor after the will or trust was created then the omitted spouse is entitled to a share of the probate or trust estate. That share is one half of the community property and up to one half of the deceased spouse's separate property.

The omitted spouse statute does not apply to a surviving spouse who was deliberately disinherited by the deceased spouse, who was provided for by the deceased spouse through a transfer occurring outside of the will or trust and the will or trust makes clear that this transfer was in lieu of an inheritance under the will or trust, or where there is a valid agreement waiving the right to a share of the deceased spouse's estate.

The omitted spouse statute is a valuable protection for spouses entering a second or later marriage where no action is taken to develop a joint estate plan with the new spouse. It ensures the new spouse a degree of financial protection when their spouse dies.

The omitted spouse statute can also be misused by abusive or domineering spouses, even in a first marriage. Here is a rather extreme example as related by my client's son in law;

Given the conduct of his father-in-law over his 62-year marriage and most recently the way he acted in the last couple of years of his life, attorney Jeff Kane knew his mother-in-law's case needed someone who specialized in trust litigation.

"A mistake could end up costing you a lot of money and even more than that, it might cost you the sense of justice that is so important to some people. I knew that my mother-in-law, because of her age, would have ended up accepting far less than what she should have expected."



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~ Scott Grossman

Pat and Joe married when they were both just 18 years old. They had been married for over 60 years when Joe passed away. During the course of their marriage they had five children together. Pat and Joe started out with nothing, but as Joe was promoted through the ranks of the beverage industry they began purchasing rental properties in the Huntington Beach area of California in the early 1970's.

This wasn't your typical marriage. 30 years prior to his death, Joe left Pat to "see the world", but he continued to utilize Pat to collect rents, pay business expenses, provide bookkeeping and tax preparation and even enlisted her help to set up a new business. A strong Catholic, Pat believed that getting a divorce was not the right thing to do. "She continued to do all of the things that a wife would do for a husband with the exception of living with him and enjoying the money that they created together," stated Jeff. At the time of his death, Joe's estate was worth several million dollars.

As the years went on, Joe provided Pat with a monthly stipend of \$1,000-2,000. However, just two weeks prior to his death, he asked Pat to sign a document that said she agreed to receive nothing when he died – not even the small stipend he had been paying her. In addition, he had revised his trust to state that should Pat make any attempt to seek money from him or his trust, all of their children and grandchildren would be disinherited and would receive nothing. When Pat refused to sign the document, Joe attempted to protect himself by revising his trust to include a no-contest clause.

"I knew there were instructions in place for Joe's trust to defend itself against attacks from the very people who were seeking to attack it. A lot of the facts of this case dated back to 1950. My mother-in-law was very pessimistic about her chances. She's 80 years old, very proud and very private, and she was reluctant to lay out for the world to see all of the facts and personal details of her life with Joe," Jeff shared.

"Scott took a strong personal interest in the case. He took on some of the anger that we felt having watched this man over a period of 25 years coerce Pat into signing over deeds to these properties that they owned together with no consideration going her way at all." Joe in turn took the money from the sale of the properties and bought more properties, putting them in his name only. "Joe was despicable. After devoting huge amounts of time learning the intricacies of this case, Scott was absolutely appalled at the conduct of this guy and how he could take advantage of a woman who did nothing but loyally serve him for sixty years. I think that gave her strength."

"I sit in court a lot and see these attorneys mosey up to the podium, and I'm actually embarrassed for my profession sometimes," said Jeff. "Not only is there a lot of money at stake, but many of the people embroiled in these cases are looking for justice after being mistreated or taken advantage of. I know in the minds of many that justice equals money, but in this particular case justice had a huge moral and ethical component to it as well."



Like an omitted spouse, an omitted child does not have to challenge the will or trust in order to obtain an inheritance.

~Scott Grossman

Pat's case settled in 17 months, resulting in Pat being awarded half of Joe's \$7.7 million dollar estate. In addition, the Trust agreed as part of the settlement to not attempt to invoke the no-contest clause, and to instead allow all of the children and grandchildren of the marriage to remain beneficiaries. Jeff shared how important this was to Pat's family, "Pat was in poor health with very little fight left in her. Had Joe's attempts to disinherit Pat been allowed to stand, it would have been the final indignity for her, the final insult. She would probably be dead now.

Instead, I now see her now holding her chin up and acting very proud that she finally stood up to Joe. Scott was able to bring her a decisive measure of justice and provide her some dignity in that she was able to stand up in a legal forum and say, 'No. This is not right. I'm going to tell everybody what this man did to me over the course of a 60 year marriage and let them determine if this is right.' Joe was Pat's husband and he took advantage of what Pat believed was a mutual trust and loyalty. When the other side buckled under and paid up, it was vindication for her."

Like an omitted spouse, an omitted child does not have to challenge the will or trust in order to obtain an inheritance. The omitted child files a petition with the probate court making the claim that the child was born after the will or trust had been created. If the omitted child is able to prove their case then the omitted child receives a share of the probate or trust estate. That share is the same amount that child would have received if their parent had died without a will or a trust.

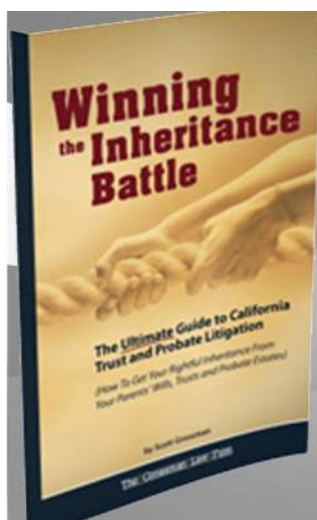
Omitted children include adopted children, children born out of wedlock, and foster children if the foster child lived with a foster parent while the foster child was under 18 years old and would have been adopted by their foster parent but for a legal barrier.

An omitted child will not inherit if their deceased parent's will or trust affirmatively states the parent's intention not to leave anything to their child, the deceased parent left substantially all of their property to the other parent of the omitted child, or the deceased parent provided for their omitted child by a transfer passing outside of the will or trust, and the will or trust says that this transfer is in lieu of an inheritance under the will or trust.

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