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Ask the Experts: My brother never let me see mom's will

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What happens to Mom's assets after she's gone?

This week, Roseville estate planning attorney Lynn Dean takes questions that address how parents can avoid sticky situations after they're gone.

To see more of Dean's "Ask the Experts" advice (or to ask your own questions), go to: www.sacbee.com/ask. You can also get advice on investing, personal finances and taxes.

I am originally from Toledo, Ohio, where my mother passed away about five years ago. Previously, my oldest brother took Mom to his attorney and was appointed executor of her estate. worth only about $75,000. He paid the rest of us siblings $3,000 each and said there was nothing else left. I have tried in vain to locate a copy of the will but it is difficult to get things done from California. Is there a time limit to obtain a copy of the will and take action? How should I proceed?

In California, you don't become an "executor" of an estate until after the person passes away. As executor, your brother has a fiduciary duty to all of your mother's children. This means he is required to provide all beneficiaries with an accounting of the estate.

However, if he sold your mother's home and spent the money on her nursing home expenses *prior* to her death, his fiduciary obligation was to your mother.

For anything that was done prior to your mother's death, he was most likely acting as a "trustee" of her trust. If there was no trust, then he may have been able to sell her home and pay her bills, using a power of attorney. The person using a power of attorney also has fiduciary responsibilities but, in this situation, that duty was to your mother.

However, if your brother did not spend all of your mother's money on her living expenses (i.e. he pocketed the money for himself), then you could bring an action against him for breach of fiduciary duty. You will not know the details until you can see an accounting of what your brother did.

My advice is to consult an Ohio attorney about whether you can obtain a copy of your mother's will or trust, and what it

would cost to compel your brother to provide an accounting of his activities.

To find an attorney, contact the National Academy of Elder Law Attorneys, www.naela.org. Or call (703) 942-5711.

My mother's trust includes her mobile home. Three years ago, to assure that my brother could live there after her death, she changed the (title) to my brother's and mother's names with right of survivorship. There is no family conflict about this decision. Did this action take it out of the trust? How will the home transfer after her death?

Great question! Mobile homes are different from a regular home and property.

When you put a mobile home into a trust, you have to submit paperwork to the state Department of Housing and Community Development, which registers mobile homes.

In your case, the joint tenancy titling means that the mobile home legally belongs to your brother after Mom dies. However, there is no "automatically."

After mom dies, if your brother is not selling the mobile home immediately, he can request a "change of ownership" (which requires her death certificate) and put the title into his name only.

But remember: Just because an asset (like a mobile home) is listed on a piece of paper does not mean it was officially titled in the trust's name. In order to have your assets "in the trust," you must change their title. This is true for real property, mobile homes, investment accounts, bank accounts, etc.

One reason estate planning attorneys want clients to come in for periodic reviews is to ask: "Are your assets held in the name of your trust?" Many times, clients have moved, changed banks or changed brokers and forgot to title their new assets into the name of their trust.

It is very important that people know they must change the title for things to be technically "in the trust." Otherwise, the trust cannot do its job after they're gone.