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Disadvantage of an Individual Trustee

Robert and Corinne Silver, residents of Illinois, created trusts to manage their wealth. They had two children, Elizabeth and Geoffrey, who were the remainder beneficiaries. After Robert died, Corinne became the trustee of both trusts. In 2012 she amended the trusts to name a grandnephew, Peter Horneck, as successor trustee (as well as the executor of her estate). Corinne also added a trust provision providing that, in the event trust distributions were delayed, the trustee was to pay certain of Elizabeth’s expenses, and that these payments were not to count against her one-half share.

Corrine moved to Florida in 2014, and resigned as trustee in 2015. Mr. Horneck, a Colorado resident, took over the trust administration, in consultation with the family lawyers who were still in Illinois. Corrine died in 2017.

In July 2017 Elizabeth asked for the reimbursement of some \$14,000 in expenses. Horneck sent her a check for \$50,000, but, when she learned that \$50,000 had also been sent to her brother, Elizabeth did not cash the check. She thought her pre-distribution payments should be coming “off the top” of the trust. After two years of correspondence and fruitless negotiations, Elizabeth filed suit in Illinois for an accounting and an enforcement of the trust provisions.

The problem was that Elizabeth herself was a resident of Florida, the trustee lived in Colorado, and brother Geoffrey lived in Oregon. The trust document recited that it was to be governed by Illinois law, but went on to say that “The situs of any trust created hereunder may, however, be transferred at any time.” The trust situs became Florida when Corinne moved there, and Colorado when she resigned the trusteeship. The Illinois court held that it did not have jurisdiction over the case, under these circumstances.

If Robert and Corinne had named a trust department or a trust company as successor trustee, it is probable that delays and lawsuits over the trust could have been avoided.

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