

Gary Botwinick Quoted In NJ.com Article, "If an executor is uncooperative and hostile, what can I do?"

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By Karin Price Mueller | [NJMoneyHelp.com](#) for [NJ.com](#)

Q. What can I do if the executors and trustees are uncooperative, non-communicative, and hostile?

A. Executors and trustees are fiduciaries.

A fiduciary is defined in Black's Law Dictionary as "a person having duties involving good faith, trust, special confidence, and candor towards another."

Executors are tasked with many duties, including collecting the assets of the decedent, paying claims against the estate and distributing bequests and the estate among the beneficiaries, said [Gary Botwinick](#), an estate planning attorney and chair of the wills, trusts and estates group at [Einhorn, Barbarito, Frost & Botwinick](#) in Denville.

"In carrying out his/her duties, an executor is required to act in the best interests of the estate and must engage in the expeditious and efficient settlement and distribution of the estate's assets, without awaiting involvement from the court," he said.

The New Jersey Supreme Court has ruled, and the recently enacted New Jersey Uniform Trust Code now requires, that both an executor and a trustee, as fiduciaries, owe a duty of "undivided loyalty" to the best interests of the beneficiaries, Botwinick said.

A fiduciary is also required to inform the beneficiaries of matters known that materially affect the trust or estate, he said.

The fiduciary, at the request of any beneficiary, also has an obligation to make a full disclosure as to the status of the trust — or within certain time parameters, an estate — and its administration, Botwinick said.

“Most importantly, when a beneficiary believes that a fiduciary may have violated any duty, such beneficiary has a right to call him/her to account and may seek an order of the court directing a formal accounting of the fiduciary’s actions,” he said. “Upon application by a beneficiary, if the court determines that the fiduciary has violated one or more duties, that fiduciary may be removed. Among the reasons for removal of a fiduciary is mutual hostility if the same materially interferes with the administration of the estate or trust.”

But, he said, not everything would mean grounds to remove a fiduciary.

For example, a mere disagreement between the beneficiary and a fiduciary as to the manner in which the fiduciary carried out one or more duties wouldn’t be enough. Neither would resentment by a beneficiary of a fiduciary’s authority or antagonism by the fiduciary’s personality.

“The court’s power to remove a fiduciary is to be exercised sparingly, and a beneficiary should keep in mind that courts are reluctant to remove a fiduciary without clear and definite proof of fraud, gross carelessness or indifference,” Botwinick said. “Nonetheless, if a beneficiary believes that a fiduciary is not acting in accordance with his/her duties, the court may exercise its authority, short of removal of the fiduciary, to expedite a smooth process of estate or trust administration.”

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