



SECRET CHANGING OF TRUST CATCHES WIFE UNAWARE...AND WITHOUT RELIEF!

A FAMOUS ATTORNEY'S LAST SECRET MOVE MAKES NEW LAW....

*You know him from the movie **Erin Brocovich**...he's the attorney whose paralegal, **Erin**, worked to get a massive judgment against PG & E and he is making headlines even after he died...for in secret he altered his estate plan by removing assets from a revocable **intervivos** trust without telling his wife, leaving more assets to his kids by a prior marriage.*

She was outraged. He never told her and the first she found out that his community property half was not going the way their jointly created Trust was written was...after he died. She sued...but was shocked yet again by the reaction of the Court.

THE FACTS:

Edward Masry was able to collect forty million dollars as a fee back in 1997 as part of his settlement with PG & E and died in 2005. Long before his death he and his wife of thirteen years executed a joint trust, the typical married couple "revocable **intervivos** trust" in which a couple puts their assets into a joint trust while alive which pays all the income to themselves, is fully revocable by both or either, but if one or both die when it is still in effect, allows the transfer of his or her assets to the heirs without formal probate. Usually, but not always, the Trust pays the proceeds to the surviving spouse. This saves tens of thousands in possible executor and attorney fees. See our article on this website as to the advantages and problems of such Trusts.

But a few weeks before he died, Masry pulled from the joint trust sizable assets without telling his wife and put them into a separate Trust which was controlled by two of his children. Masry's widow, **Josette Masry**, contended that her husband had improperly shifted assets including an interest in the **Westlake Village** law firm and did not tell her. It was utterly unfair, she argued. She had not altered her own half of the Trust and had relied on him to keep the jointly drafted trust in full force and effect.

THE RULING:

But the three justice panel ruled that while Masry's trust required each trustee to notify the other if one party decided to back out of the trust agreement, the trust did not explicitly say that was the *only* revocation method they could use. In fact, the court held, state law

allows either party to act unilaterally as long as the trust does not specifically limit how a trust is revoked.

“Josette argues that such an interpretation...is not good public policy because it allows a “secret” revocation and represents one spouse taking advantage of the other. It is true that had Josette been given notice of the revocation as provided in the family trust, she could have tried to persuade Edward to change his mind or could have made changes in the deposition of her community share of the trust property. But married parties are permitted to dispose of their share of the community without consent of the other spouse.” Or, in this case, even without notice to the other spouse.

The case is up on appeal but, as the attorney for Edward Masry argues, “While the Second Districts’ decision breaks new ground in probate law, it reflected a plain reading of California statutes. It simply confirms the statutory language that says a trust may be revoked either by the manner provide in the trust instrument or by manner provided in the Probate Code.” He thinks the case will be upheld on appeal.



LESSONS:

Whether one thinks Masry acted rightly or wrongly, the real message is that your spouse can alter the trust you made jointly and not tell you...and vice versa. Community property, absent agreement to the contrary, is jointly owned by husband and wife and either can alter their share at will. The courts jealously guard that power and that protection pertains to putting assets into...and taking them out of...trusts.

The case might have been different if he had misrepresented to her what he was doing. If she had asked him if he had altered the trust and he denied doing that, she could have brought a case based on fraud, though since he had the right to make that change at any time, it is unclear what the “damages” would have been for that fraud.



But if you want to restrict the ability of a husband or wife or change the trust in secret, that must be part of the trust instrument and agreed upon by both parties. Otherwise, one might find oneself like Mrs. Masry, hurt and angry, and feeling foolish, indeed...