
When Probate Goes Wrong

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The Probate Court oversees administration of decedents' estates, but occasionally disputes arise that the parties cannot resolve without direct Court intervention: Is the Will valid? Are there assets missing? Has the Executor violated his duties? These disputes are litigated in the Probate Court, which has specific jurisdiction to handle probate-oriented disputes. Below are some answers to common questions about what to do when probate goes wrong:

- How can I contest a Will?

A will contest is a specific type of lawsuit—an action requesting the Probate Court to declare that a Will is invalid. It must be filed within three months after the Executor certifies to the Court that she has notified the beneficiaries and heirs that the Will was admitted to probate.

- Why would a Court declare that a Will is invalid?

Usually for one of three reasons: (1) It was not signed with the formalities required by law (e.g., the Will was not witnessed by two adults); (2) The decedent was unduly influenced in creating the Will; and/or (3) The decedent did not have the mental capacity to execute a Will.

- How can we resolve a disagreement about what a Will means?

If family members agree a Will is valid but disagree over how the Will should be interpreted, the executor or a beneficiary can file a “declaratory judgment” action to have the Court decide how to interpret the Will.

- What can an Executor do if she thinks someone is improperly holding estate assets?

She can file a “concealment of assets” action against the party and require that person to testify concerning possession or transfer of estate property. If the Court finds the party concealed the assets, that party must return the assets along with a ten percent penalty plus attorney fees.

- What can a Beneficiary do if he thinks the executor is not properly managing the estate?

The beneficiary is entitled to receive reports of the estate assets from the executor—an “Inventory” that shows the assets at the beginning of the estate and “Accounts” that show what happened to the assets during administration. The beneficiary can file objections (referred to as “exceptions”) to these reports after they are filed with the Court.

- Do these same procedures apply to Trusts?

These rules apply to trusts created in Wills, but the most common Trusts these days are non-probate documents. Disputes over non-probate Trusts may not be litigated in Probate Court. However, there are similar actions that may be brought in the general court system (as opposed to the specialized system of the Probate Court) to interpret Trusts and enforce a Trustee's duties.

Probate litigation is very different from general litigation. It requires a different knowledge base and skill set, because it straddles the worlds of litigation, probate administration, and sometimes taxation. Schneider, Smeltz, Ranney & LaFond's combination of excellent litigators and knowledgeable probate lawyers uniquely positions it to efficiently and effectively handle probate litigation matters.

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This paper is not intended to be exhaustive on the subject matter nor to provide legal advice to the reader.

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