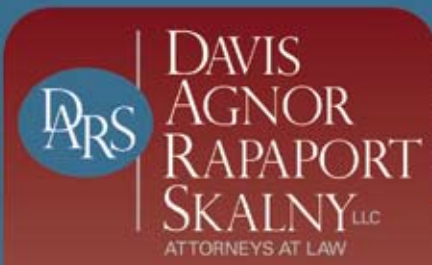


We help you find your way.



Fiduciary Litigation: Family Law for the 21st Century

In CBS's new reality series, "The Will," a wealthy land developer and rancher is putting his most beloved possession--a large ranch in Kansas--up for grabs. Ten of his family and friends will compete to claim the title of "most deserving heir" and win the ranch.

With unprecedented family wealth transferring from our "Greatest Generation" to our "Baby Boomers," competition among family members for that wealth is becoming an increasing reality in many families off-screen as well. Additionally, when individuals fail to establish effective estate plans, it sometimes becomes necessary to invoke a court's authority to either provide protection for a disabled person or interpret estate planning provisions to protect the integrity of a person's estate plan.

Fiduciary litigation is a rapidly growing area of the practice of law that addresses these issues. There are three primary areas of such litigation.

Guardianships

Guardianships of disabled adults are becoming more frequent. A guardian is someone appointed by a court to assume legal responsibility for another person, another person's property, or both. A guardianship proceeding is necessary when a disabled person, known as the ward, is unable to make responsible decisions concerning his or her medical care or financial matters, usually because of a physical or mental illness, and that person has done no planning to avoid a guardianship. Common areas of contention among family members in guardianship matters are the need for a guardian, and the selection of the guardian.

Transfers During Lifetime

Transfers during the lifetime, or "inter-vivos" transfers, are another area of fiduciary litigation that is expanding. Transfers of real property, bank accounts and/or stocks prior to death by a person lacking capacity to make such a transfer, or transfers by a fiduciary entrusted to be an agent under a general power of attorney, are the cause of

such litigation. For example, a child or other person may have mom or dad retitle real estate, bank accounts or stock accounts with them as a joint tenant with rights of survivorship. Upon mom or dad's death, a child or other person would become the sole owner of the real property and that property would pass outside of mom or dad's estate, thereby bypassing mom or dad's wishes as set forth in their Will. Often, these transfers do not come to light until mom or dad passes away. However, either before or after death, a civil action may be filed to invalidate the transfer based on undue influence, breach of a confidential relationship, or breach of a fiduciary duty.

Will Caveat/Contests

Will caveats, also known as "contesting" a Will, have become a hot topic in the last few years. All too often, the elderly are victims of fraud and undue influence exercised upon them by a family member, caretaker, or "friend" who want to obtain control of their assets after their death. They often have their Last Will and Testament changed to leave everything to just one of their children or to someone who is not related to them. At times, they do not have the mental capacity to make such a decision. And, often times, the family is unaware of any changes to mom or dad's Will until after they die. A Will caveat is a method by which disgruntled beneficiaries can seek to set aside a Will that they believe was unfairly obtained from an enfeebled member of the family.

Effective communication within the family as to mom or dad's wishes, coupled with an estate plan incorporating both disability and estate planning tools, should minimize the need for fiduciary litigation. With estates becoming larger, the more issues that can be addressed among family members prior to mom or dad's death or disability, the fewer issues will have to be resolved by a court.