

## Probate, Trust, and Estate Litigation

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### Related Practices

#### Probate, Trust, and Estate Litigation

- Probate Litigation
- Trust Litigation
- Will Contests

### Probate, Trust, and Estate Litigation Lawyers You Can Trust

Wills, trusts, and related estate matters often trigger lawsuits from a number of different parties.

But probate litigation is a broad practice area that can involve both the deceased as well as the living.

Beneficiaries, executors, creditors, and even spouses who have been left out of estate plans could end up filing suit.

Claims may also involve elderly or incapacitated individuals who find themselves caught up in court action.

The probate litigation lawyers of Rosen Hagood are skilled at representing plaintiffs and defendants in various claims.

If you're involved in a lawsuit concerning probate, estates, or similar issues, reach out to us today to learn more about your legal options.

### Trust Litigation

Trusts are legal instruments by which one party, a trustee, holds property for the benefit of a third party, the beneficiary.

Trusts can provide for generations of family members, protect family assets, manage a family business, eliminate or minimize taxes, or carry out charitable objectives.

In managing the trust assets, the trustee is responsible for acting in the beneficiary's best interests and following the rules set forth in the trust.

Modern trusts often provide for trust protectors, trust advisors, or other parties in addition to the trustee, who are typically given powers to address unforeseen circumstances when the trust was created, such as a change in the law.

These persons are charged with acting in the trust's best interests, which may not necessarily align with the beneficiary's interests.

A trust beneficiary may believe the trustee has mismanaged the funds or violated the guidelines of the trust, including through improper investments or misappropriated assets.

As a fiduciary, the trustee can be held liable in court for poor or inappropriate decisions

concerning trust property. A beneficiary may also have the right to remove a trustee even if the trustee objects.

## Will Contests

A will should reflect the testator's last wishes for how his or her estate will be distributed after death.

However, beneficiaries often have reasons for challenging wills in probate court, including:

- **Undue influence.** Improperly pressuring a testator to make last-minute changes to a will can be considered undue influence. These cases often arise where a family member, a person in a confidential relationship (e.g. power of attorney, financial advisor), or a stranger, like a caregiver, befriends the testator close to death and alters a long-standing estate plan.
- **Mental incapacity.** A testator must be of sound mind to execute a will. Evidence that the testator was in some way lacking capacity could form the basis of a will challenge.
- **Fraud.** Fraud comes in different forms, like forged signatures, swapping actual pages from the will for fraudulent ones, or withholding or destroying a will. If you suspect a will is somehow inauthentic or has gone missing, there could be evidence of fraud.
- **Duress.** Coercing, threatening, or using force or intimidation to compel a testator to execute a will or include or exclude terms is considered duress. The resulting document is something the testator would not otherwise have signed.
- **Mistake.** There are different types of mistakes, such as mistakes of fact. Sometimes, a mistake is serious enough to invalidate the will entirely.

## Intestate Estates

To die without a will is to die intestate.

South Carolina has a set of statutory rules to decide who will inherit property if someone dies intestate.

The probate court will appoint a personal representative to manage an intestate estate. The rules concerning who inherits what is complicated, and personal representatives don't necessarily make accurate or prudent decisions under the law.

Personal representatives can also be accused of mismanaging estate assets, self-dealing and using estate assets for personal expenses, and similar inappropriate conduct.

## Fiduciary Litigation

A fiduciary is a person or organization that acts on behalf of someone else, putting that person's needs and interests above their own.

A fiduciary relationship is one of mutual trust and confidence, imposing upon the fiduciary requirements of loyalty, good faith, and fair dealing.

A fiduciary is held to a standard of conduct that is stricter than the morals of the marketplace. There are different types of fiduciaries in the context of estate law.

Some, like personal representatives and trustees, assume their fiduciary roles upon passing the testator (will) or settlor (trustee).

Others, like accountants, financial advisors, and health care agents, have fiduciary obligations that exist prior to an individual's passing.

If you believe that an individual or organization is acting irresponsibly with respect to your loved one or that person's estate, we may be able to help.

### Intentional Interference with Inheritance

A number of states recognize a new type of inheritance-related claim known as intentional interference with inheritance.

This claim can involve a wide variety of scenarios in which a bequest to a family member has been reduced or eliminated, including *inter vivos* gifts (made during the donor's lifetime), the destruction of a will or trust, or a family member interfering with a testator's ability to make a desired amendment to his or her estate plan.

Rather than filing an action in the probate court seeking to invalidate the estate planning document, this new type of claim allows the aggrieved party to sue the alleged "interferer" for monetary damages.

Unlike the remedies available in a will contest, some courts allow for the recovery of punitive damages and pain and suffering damages to a party who prevails on a claim for intentional interference with inheritance. South Carolina's Supreme Court has not yet decided whether our state will adopt this type of claim, but a growing number of states have embraced it.

### Powers of Attorney

You can delegate legal authority to someone else to act on your behalf with a power of attorney.

That person, the attorney-in-fact, has the right to take specific actions with respect to your finances and personal affairs.

South Carolina has enacted a Uniform Power of Attorney Act setting forth detailed duties and powers of the attorney-in-fact as well as providing for remedies if the power is abused.

Abuse of a power of attorney typically happens when the attorney-in-fact exploits this authority to steal or misappropriate assets or exceeds the legal limits placed upon them.

## Elective Share and Omitted Spouse Claims

Under South Carolina law, a surviving spouse is automatically entitled to a portion of a decedent's (deceased person's) estate, known as an elective share or an omitted spouse claim.

The purpose of this law is to prevent a surviving spouse from being unfairly disinherited if they were omitted from the will or given an unreasonable portion of the estate.

The law may also allow a surviving spouse to set aside transfers of assets that were made to reduce the spouse's inheritance.

Litigation may be necessary to determine the actual value of the spouse's share and ensure he or she receives it.

## Conservatorships and Guardianships

Conservators and guardians generally manage the affairs of someone who is deemed legally incompetent. But to create a conservatorship or guardianship, a court must step in.

Disputes may concern whether a conservator or guardian is needed, who the conservator or guardian should be, what that person's powers should be, and related matters.

## Multiple-Party Bank Accounts

Having multiple parties on a bank account can create problems in the context of estate law.

For example, a joint account holder may be unable to access funds in the event another joint account holder dies.

The law involving multiple-party accounts establishes complex rules relating to the rights of the parties among themselves to withdraw funds from or make transactions on the account while all owners are alive and what happens to the account funds when one of the owners dies, including the rights of a surviving spouse.

We help clients with various problems that arise from multiple-party accounts.

## Creditors' Claims

Creditors have the right to file claims against an estate for debts that were owed by the deceased.

There are strict procedures and deadlines for doing so, and understanding them is key to knowing what a creditor may legally claim.

Our firm represents creditors as well as beneficiaries who deny the validity of their claims.

## Partition Actions

Decedents often leave homes or pieces of land to their children or other beneficiaries.

While some beneficiaries may wish to keep the property, others might want to sell it. In cases like this, the estate's personal representative or beneficiaries can ask the court to partition (divide) the property.

Sometimes, the property can be divided evenly into smaller parcels. But it may need to be sold to the public instead, with the proceeds from the sale distributed to the beneficiaries.

There is a court procedure by which partitions take place. Beneficiaries who want to keep the property in the family are given the right to purchase it before the public can do so.

We assist with all aspects of the partition process and can represent beneficiaries who either want to sell or keep the property.

### Serving Clients in a Variety of Probate and Estate Litigation Cases

No matter the type of probate or estate matter you have, you can trust the seasoned legal counsel of Rosen Hagood. If you are involved in some aspect of litigation or have questions, reach out to us today.

## Experience

- Represented clients in probate litigation involving who was entitled to receive the decedent's collection of valuable German artwork, sculptures, and other tangible personal property which had belonged to the decedent's family from the early to mid-1900s. The Probate Court ruled that our clients were to receive the personal property by virtue of an informal "separate writing" which he had created on his computer shortly before his death and which he referenced in his will.\*\*
- Represented a real estate developer in settling a breach of contract lawsuit against its joint venture partner based on claim that partner tried to secretly sell the partnership property and assets to a third party, while wrongfully excluding our client.\*\*

**\*\*Disclaimer:** Results may vary depending on the facts involved in any particular case as the facts of every case are different. The results reported throughout this website should not be construed as a predictor of future results or as a guarantee as to the outcome of any particular case.