Trust Litigation

Related Practices

Probate, Trust, and Estate Litigation

- Probate Litigation
- Trust Litigation
- Will Contests

Trust Litigation Attorneys Skilled in Conflict Resolution

A trust is designed to provide financial support for beneficiaries, minimize estate taxes, and meet other estate planning objectives.

However, not all trusts are administered or created in a manner that everyone agrees with. Beneficiaries may have questions about the trustee's behavior and decide to take action.

Or they may dispute the validity of the trust entirely. If this happens, and regardless of which side of the lawsuit you are on, you will need skilled legal counsel.

You can count on the trust litigation attorneys of Rosen Hagood.

Understanding Trustees' Fiduciary Duties

Knowing what trustees do is essential whether you're the trustee or one of the beneficiaries.

Essential to this understanding are what are known as fiduciary duties. A fiduciary is an individual who is obligated by law to put the interests of others ahead of their own.

The fiduciary has a special relationship with others based on trust, and the law, therefore, imposes certain responsibilities on that person.

In the context of trusts, trustees are fiduciaries.

In South Carolina, fiduciaries are specifically required to exercise the following duties, among others:

- Follow the terms and instructions of the trust
- Comply with trust laws
- Act with loyalty to the beneficiaries
- Act in the beneficiaries' best interests
- Do not use trust assets for personal gain
- Do not combine trust assets with personal assets
- Make prudent, diversified investments
- Keep detailed records of trust activities
- Provide accurate and timely accountings to beneficiaries
- Act with impartiality (do not favor one beneficiary over another)

When trustees fail to carry out these responsibilities, beneficiaries may choose to file a lawsuit.

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However, breaches of fiduciary duties are not the only basis for trust litigation.

Why Trust Litigation Happens

Trust lawsuits often allege poor administration, which typically involves an allegation of a breach of fiduciary duty.

However, trust litigation may also concern the creation of the trust, the property held by it, or problems between beneficiaries.

There are a few common reasons that lawsuits are filed over trusts.

The trustee allegedly misappropriated or poorly handled trust assets.

This broad category of complaints lodged against trustees usually involves allegations of misplacing, losing, or poorly investing trust assets.

In some cases, the trustee is accused of stealing trust assets, using them for personal gain, or commingling them with personal property.

Accounting Issues

As mentioned above, trustees are required to provide accurate, periodic accountings to beneficiaries.

The beneficiaries may become concerned about managing the trust and demand an accounting.

If the trustee does not respond, or there are questions about how accurate or complete the account is, a lawsuit may be filed.

Not following the trust's instructions.

The terms of the trust require the trustee to take certain actions. Failing to do so could expose the trustee to liability.

For instance, the trustee may be required to make certain distributions to beneficiaries but may ignore this obligation or otherwise not carry it out.

Disputes over trust property.

This is another broad category of trust litigation that concerns the property and other assets held by the trust.

Property that should be included in the trust may have never been transferred to it or may not even exist.

Because of vague language in the trust, there could be disagreements over the identity of the property.

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Another possible scenario is that two instruments (a will and a trust, for instance) may have disposed of the property differently.

Disputes between Beneficiaries

Some legal problems emerge because of issues between beneficiaries. As mentioned above, trustees are required to be impartial towards all beneficiaries. However, one may attempt to exert improper influence over the trustee.

In other cases, one beneficiary may allege that another has stolen or damaged trust property.

Questions over the creation of the trust. It is possible that the trust may be invalid. For instance, someone may have exerted undue influence over the settlor. On the other hand, the settlor may have lacked the sufficient capacity to create the trust.

There could even be allegations of forged signatures or missing pages in the trust instrument.

Possible Outcomes of Trust Litigation

What will happen as a result of a trust lawsuit?

The answer depends largely on the allegations contained in the complaint.

Where breaches of fiduciary duty are alleged, there are a number of possible remedies available under the law, including:

- Ordering the trustee to perform his or her duties
- Enjoining the trustee from taking further action is considered to be a breach
- Requiring the trustee to pay money, return property, or otherwise correct a breach
- Requiring the trustee to provide an accounting of the trust to the beneficiaries
- Appointing a special fiduciary to take control of the trust property and administer the trust
- Suspending or removing the trustee
- Reducing or denying compensation to the trustee
- Voiding an act of the trustee
- Tracing and recovering trust assets that were improperly disposed

If the subject of the litigation is a dispute between beneficiaries, a court may order one or the other beneficiary to either do or stop doing something. On the other hand, lawsuits dealing with the creation of a trust could result in the trust being invalidated. No matter the nature of the lawsuit, the most important thing to know is that numerous potential remedies are available.

Recovery of Attorneys' Fees

The South Carolina Trust Code provides that "[i]n a judicial proceeding involving the

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administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy."

As a result, the Court has the discretion to require any party to the litigation or the trust itself to pay the attorneys' fees and costs of another party (or parties).

Contact Our Charleston Trust Litigation Attorney

If you're a beneficiary with concerns about a trust or a trustee who has been accused of impropriety, it is imperative to take swift action. Trust property could become lost, evidence may be difficult to locate, and court deadlines may affect your legal rights. To learn more about trust litigation in South Carolina, call Rosen Hagood today.

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