

Estate & Fiduciary Litigation

The administration of an Estate or a Trust can be a complex undertaking. An Executor and a Trustee (collectively referred to as a Fiduciary) must act in accordance with his or her fiduciary duties. Sometimes, it is necessary to litigate matters involving estates and trusts. The following are several examples of Estate & Fiduciary Litigation.

WILL CONTESTS

When a loved one dies with a Last Will and Testament, the Will must be valid in order to be enforced in court. If a Will is admitted to probate and an heir or beneficiary believes that the Will is invalid, then he or she may be able to contest the Will on any of the following grounds:

- Undue influence – A person in a position of trust and confidence with the testator abused that position to manipulate the testator into making the Will.
- Fraud – A person intentionally gave false information to the testator, inducing the testator to change the will to benefit that person.
- Lack of capacity – The testator was not mentally competent at the time he or she executed the Will.
- Lack of Formalities – The Will was not drafted, signed, or witnessed in accordance with Virginia law.

There are limitations on who may contest a Will and when they may do it. In Virginia, a Will contest generally must be filed within one year of the date of probate.

AUGMENTED ESTATE CLAIMS

Virginia law provides certain protections for the surviving spouse of a decedent. One of those protections is the “elective share” or “augmented estate claim,” which allows a surviving spouse to claim a certain portion of the decedent’s probate and non-probate assets: one-third if the decedent is survived by children or their descendants and one-half if he is not. By claiming the elective share, the surviving spouse relinquishes the right to inherit from the decedent through a Will or intestate

succession. To claim the elective share, the surviving spouse must file a petition within six months of the date of probate, if the decedent had a Will, or the qualification of an administrator, if he did not. After the surviving spouse files the petition, the court will determine the value of the augmented estate and the amount to which the spouse is entitled. However, if the surviving spouse waived the right to make the claim in a valid pre-marital or marital agreement, she will be barred.

CLAIMS AGAINST FIDUCIARIES

As fiduciaries, personal representatives and trustees owe certain duties to beneficiaries, including the following:

- To act loyally in the best interest of the beneficiaries and to avoid self-dealing.
- To use reasonable care and skill in handling the trust or estate.
- To provide accurate inventory and accountings to the Commissioner of Accounts.

If a personal representative or trustee breaches any of his fiduciary duties, he is liable for damages and may be subject to removal. If you are a fiduciary faced with a difficult legal question regarding distributions to beneficiaries, you may seek guidance from the court by filing a Petition for Aid and Direction.

Learn More

Call Oast & Taylor at 757-452-6200 or visit www.OastTaylor.com to schedule a consultation with an attorney at one of Oast & Taylor’s convenient office locations in Virginia Beach, Portsmouth, Chesapeake, or Elizabeth City, North Carolina.

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Virginia Beach | 277 Bendix Road, Suite 400 | Virginia Beach, Virginia 23452
Olde Towne Portsmouth | 355 Crawford Street, Suite 720 | Portsmouth, Virginia 23704
Chesapeake | 115 Bruton Court, Suite A | Chesapeake, Virginia 23322
Elizabeth City | 905 West Church Street | Elizabeth City, North Carolina 27909
757.452.6200 | F: 757.452.6201 | www.OastTaylor.com

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