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DISPUTES OVER PROBATE AND TRUST ESTATES

Disputes over the distribution of assets can be detrimental to a family when a loved one has passed on. Jealousy or suspicions can arise when certain family members shared a closer familial bond than others with the loved one. Some may question if the will or trust has been changed to benefit a particular person. If a certain family member was granted power of attorney before the estate holder passed on, conflicts can arise concerning the management of the estate's finances and how that affects the beneficiaries. What happens to those assets?

Contesting a Decedent's Will or Trust

There are several ways to contest a decedent's will or trust:

■ **Mistake in Execution.** Challenges to testamentary documents may surface when someone claims that the estate holder mistakenly executed the document. This issue involves heavy factual analysis to determine whether the estate holder was mistaken when signing a document. A question to consider: What evidence exists to show that the estate holder knew he was signing the document in question? See NRS 163.003.

■ **Undue Influence.** Undue influence may surface when the content of the will or trust of the estate holder may have been influenced by a caretaker, a controlling family member, or a friend. Some issues to explore: Was the estate holder under the absolute care of someone who perhaps helped write the will or trust? Who are the beneficiaries? Is the care giver a major beneficiary under the will or trust?

■ **Lack of Testamentary Capacity.** A lack of testamentary capacity arises when the mental state of the estate holder is questioned during the time the will or trust was completed. Did the decedent understand 1) the entire constitution of her property; 2) the appropriate family members and friends to receive the benefit of her estate; and 3) the manner in which the estate property will be distributed? Some good questions to ask: Was the estate holder experiencing symptoms of Alzheimer's or dementia during the signing of the will or trust? Was the estate holder taking medications while executing the will or trust?

Probate and Trust Litigation

In addition to contesting a decedent's will or trust, a family member or an

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other expected beneficiary may seek judicial intervention to assist in resolving other issues, including:

■ **Will/Trust Construction.** If a will or trust is ambiguous, the beneficiaries are deceased or unreachable, and/or the will or trust does not appropriately disperse of the entire estate, then a court directive will help properly distribute the estate.

■ **Determination of Heirs.** At times, an estate holder may have had minimal family contact and has left no will. In this case, the heirs (as identified by the intestacy—NRS 134.030—210) will be ascertained by the court. Sometimes the decedent has unmentioned children who can choose to prove their relationship and make a claim on the estate.

■ **Breach of Fiduciary Duty.** The individual named in the will or trust or selected by the court to oversee the decedent's estate is known as a fiduciary and must follow firm rules concerning his responsibilities. If the fiduciary fails to appropriately administer the estate, a claim of breach of fiduciary duty may arise. Sometimes the cure is removal of the fiduciary. When estate funds have been mismanaged or stolen, the fiduciary can face serious legal remedies. For a list of duties and powers of a fiduciary, see NRS 143.010—210; NRS 163.023—590.

■ **Removal of Fiduciary.** A fiduciary may be dismissed by the court for a variety of reasons, generally associated with either the conclusion of his responsibilities or misdeeds associated with his responsibilities.

■ **Surcharge of Action.** If a fiduciary breaches her duty, a court may impose a surcharge against a fiduciary to remedy the damages caused by the breach.

■ **Accounting.** The beneficiaries of the estate or trust are entitled to an accounting of the estate assets. If the fiduciary has neglected to provide such documentation, a beneficiary may ask the court to compel the fiduciary to provide the accounting for the estate assets. ■



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