

TRUST & PROBATE LITIGATION NAVIGATOR

HUTCHISON & STEFFEN
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Russel J. Geist practices primarily in the areas of trust and probate litigation and administration, asset protection and business planning, and corporate transactions. Russel and other attorneys at the Firm work closely with clients' trust and estate planning professionals to maximize clients' opportunities for successful resolution of disputes. Russel may be reached at 702.385.2500 or rgeist@hutchlegal.com.

RUSSEL J. GEIST
ATTORNEY



TRUST AND PROBATE LITIGATION IN NEVADA

It is important to know what probate litigation means. Simply stated, probate is the process of administering the assets of a recently deceased person, either according to the terms of a will or a trust, or when there is no will or trust, according to state law. Although probate is often a routine and simple process, it can become complicated if disputes arise over the terms of a will or trust, or if a family member questions an executor's or trustee's handling of the estate.

According to Nevada's probate law, a probate court will identify the assets of the deceased, decide on payment of taxes and other incidental expenses, and distribute the property among the legal heirs or beneficiaries under the will or trust. Probate litigation begins when a lawsuit is filed after a party

has a dispute or problem with a will or trust. Normally, the lawsuit is filed by someone who is (or thought they would be) an heir or beneficiary. Trust or probate litigation, like any other litigation, occurs in a courtroom before a judge or jury.

There are many reasons why lawsuits are filed in probate court. Estate administration problems, breaches of fiduciary duties, and improper distribution of assets often lead to litigation. An executor must act in good faith and must administer the will and distribute assets as required under the will and by law. The same is true of a trustee under a trust.

Will contests are the most common form of probate litigation. A will contest involves an individual who has

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something to gain or lose from the invalidation of the will. However, strict time limitations are enforced as to when the individual must file these claims. The assistance of experienced legal counsel is often required to comply with filing deadlines in a timely manner and to preserve the litigation effectively. The most typical reasons wills are contested or trusts are challenged include:

- Claims of undue influence
- Breach of fiduciary duties by the executor, personal representative, trustee, or professionals
- Disputes over disposition of assets or property
- Lack of timely or proper inventory of assets
- Disputes over guardianships or conservatorships
- Omission of creditors
- Improperly executed will or trust

Importantly, the best tool to avoid to avoid trust or probate litigation is up-to-date and valid estate documents such as a will and trust. Several estate planning methods allow an estate to pass without resorting to probate. Another way to avoid trust or probate litigation is to ensure an open and honest dialogue with family members. If the family understands the wishes of the testator or the trustor, family members are less likely to instigate litigation based on the will or trust. ■



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702.385.2500
FAX 702.385.2086
HUTCHLEGAL.COM

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