

Expert Insight

The Art of Unravelling Inheritance Disputes

Contentious by its nature, the proper resolution of inheritance disputes is one of the more challenging sides of estate planning. San Francisco probate attorney Amanda Ebey sheds light on this vital side of estate planning law in this month's edition. What considerations must be taken into account to avoid an inheritance dispute arising?

In your experience, what are the most common causes of inheritance disputes?

Causes for inheritance disputes take many shapes but the underlying theme is that someone feels cheated. In contested estate plans it could be because a disfavoured child is neglected, a needier child is given preference, or a family member who rendered special services such as caretaking or upgrading the decedent's home seeks additional compensation. Of the more sinister causes, taking advantage of the decedent's weakness of mind is not only a form of elder abuse; it can constitute fraud.

A poorly drafted estate plan or improper administration of the estate are common causes of litigation. A parent will often choose an adult child to serve as trustee, but the task is complicated and frankly a thankless job. That is why I and many of my colleagues recommend the testator appoint a private fiduciary to serve in that role.

Under what circumstances can a person be judged to have imposed 'undue influence' on a testator?

Evidence to prove undue influence is circumstantial, rather than direct. It is a confluence of factors which include the relative weakness of the testator coupled with an undue benefit on the part of the accused. It is a matter of evidence for the trier of fact. Elements include (1) a confidential relationship, (2) active participation in procurement of the will or trust, and (3) undue profit. Fraud can be an element where the person exerting undue influence uses false statements to persuade the testator to do some act.

The court will evaluate the decedent's condition and the relationship between the decedent and the beneficiary. Common confidential relationships exist between caregiver and patient, parent and child, and between spouses.

Cases that focus on manipulation of the person's free will necessarily

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involve analysis of the decedent's psychological health. Conditions that affect mental capacity include illness, effects of medication, depression, isolation and social factors, such as dependency. In these cases, the attorney should retain a licensed gerontology psychiatrist to interview the testator, or at minimum read depositions of witnesses and review the decedent's medical records.

If the testator is vulnerable then the attorney must analyse what affirmative steps were taken to exploit that particular vulnerability. It is not illegal to try to ask a person to name you in a will or to drive your mother to the attorney's office. It may be illegal, however, when a request turns into actual pressure, such as repeating propaganda intending to persuade an otherwise healthy mind to believe a particular





fact, being present during interviews with the drafting attorney, or drafting the testament and then handing it to the testator to sign.

Undue benefit is often proven by comparing the testamentary gift to other gifts in light of family relationships, looking at prior testamentary plans and considering the decedent's past statements regarding their inheritance.

The practitioner should remember that courts do not like to disturb a testator's estate plan absent these factors. When all of the factors are present, however, the burden of proof may shift from the objector to the proponent (see California Probate Code §21380).

In cases where a will has been falsified, how can this be determined?

A contested document should be examined by a forensic handwriting

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expert. The expert compares the contested document with exemplars. Therefore, the attorney should retain documents such as greeting cards, letters and grocery lists penned by the decedent to deliver to the expert. The expert will scientifically examine the pressure used by the author on the page, the flow of ink, lettering techniques and consistency of flourishes to determine if the document is authentic.

Another factor may be the witnesses to the will. The will may be self-proving if statutorily defined language is present in the document, or may have to be authenticated in court by the witnesses.

What actions should the holder of an estate take to reduce the likelihood of disputes arising after they pass?

I encourage my clients to express their desires directly to their family members early. If they are reluctant to say out loud what they put on paper, then I ask them to write a letter to be read with the will or trust explaining their reasoning for their distribution plan.

I do not encourage clients to rely on the No Contest Clause. While helpful, they do not dissuade legal action by a child who was omitted or left very little. In

these cases, that child will feel that they have nothing to lose by suing.

I also encourage clients to get a full estate plan, including powers of attorney for health care and finances. Taking the time and effort to clarify one's wishes means that the family members are less likely to argue an inheritance plan based on fuzzy memories of conversations at the dinner table.

Do you have any advice for less experienced lawyers who may be looking to add estate litigation to their practice?

I recommend maintaining good relations with other lawyers. One of the reasons I gravitated toward probate and estate litigation is because I tend to see the same practitioners regularly. Some days we are on the same side of the fence, others not. I do not take their opposition papers personally.

The probate court is generally a court of equity. In the San Francisco Bay Area where I practice, each probate department has its own way of calendaring and processing cases. The rules of civil procedure are followed, but each county may have different procedural requirements, so it is good to be familiar with the local rules.



About Amanda Ebey

Amanda Ebey is a San Francisco probate attorney providing legal counsel on estate litigation, contested wills, elder abuse, personal injury and real estate law. She has helped her clients to recover millions of dollars in damages and regularly aids Bay Area residents in planning for their future or retirement.

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