



Understanding and Avoiding Post-Death Disputes

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Estate planning is done to avoid family disputes, but despite the best of intentions, disputes happen when money is at stake. When family farms are involved, complications frequently arise, because farm assets, while usually valuable, are often illiquid. The term “land-poor” is one that resonates with most farmers and their families. Generating enough funds from an estate to cover administration costs, make distributions to beneficiaries, or any other required payments or distributions, may require the sale of land or equipment needed to continue farming operations.

Despite careful estate planning, a personal representative of an estate or a trustee of a trust (both commonly called a “fiduciary”) may be forced to deal with a challenge brought by a disgruntled family member or other interested person. This can be due to the perceived mismanagement of an estate or trust, or dissatisfaction with an inheritance (or lack thereof).

Disputes involving family farms can be difficult to resolve because it’s not always easy to divide assets among beneficiaries or sell assets to make distributions, the farm may be an ongoing business that needs capital to operate, and families dealing with the loss of a loved one may struggle to cooperate and gain consensus.

Common Challenges to Estates that Involve a Family Farm

Challenges to an estate or trust typically take one of three forms:

1. Challenge to the validity of the estate planning

documents—typically brought by a person who is a disinherited family member or someone who is receiving less than what they believe to be an appropriate share from the decedent’s estate.

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2. Challenge to the administration of the estate or trust—typically brought by a person who believes, fairly or not, that the fiduciary is not properly handling administration. For example, someone may allege that a fiduciary is not doing his or her job, is using estate or trust assets for the fiduciary’s own benefit, or is otherwise not acting in the beneficiaries’ best interests.

3. A challenge to both the validity and administration of the estate or trust.

Regardless of the challenge brought, the procedure usually follows the same pattern. The challenger begins what is called a “proceeding” by filing a petition with the appropriate probate court, and serves the petition upon the fiduciary. With the petition comes a notice of hearing, which indicates that a hearing before the court is scheduled for a specific date and time.

While a fiduciary is typically not required to file a response to the petition before the hearing, it is common to do so in order to respond to the allegations and frame the issues for the court. Except in simple challenges where material facts are not disputed, the initial hearing is usually a chance for the court to hear from the parties, understand the issues, and set a schedule for case proceedings. Discovery is usually necessary to investigate the facts surrounding the allegations. Motions will be filed, and a trial may be required.

The Ins and Outs of a Challenge to Estate, Trust Validity or Administration

If a challenge is brought to the validity of estate planning documents, the challenger typically alleges that the documents are the product of undue influence or that the decedent did not have the mental capacity necessary to sign the documents. While there are other bases to challenge the validity of estate planning documents, those are the two most common.

Investigating those (or any) allegations that challenge estate planning documents is time consuming. It may be necessary to review medical records, depose key witnesses, and engage in other lengthy discovery. In most circumstances, fiduciaries defending estate planning documents in good faith can pay for the related attorney fees and other costs from the estate or trust assets. Even if the defense is ultimately unsuccessful, those costs may still be covered. Challengers, on the other hand, usually must pay their own fees and costs out of their own pocket.

A challenger may lose any inheritance he or she may be entitled to. Some estate planning documents seek to deter challenges by including a “no contest clause,” which generally provides that anyone who challenges the validity of estate planning documents or institutes proceedings related to a will or trust instrument will be entirely disinherited. However, Michigan law carves out an exception that provides that a no contest clause is ineffective if a challenger establishes that “probable cause” exists for instituting a proceeding.

A no contest clause is less effective in deterring challenges to estate or trust administration, because in a challenge to administration the challenger typically has a better understanding of whether they can satisfy the probable cause exception. These challenges typically involve questions of whether the fiduciary has breached his or her numerous duties to beneficiaries of an estate or trust under Michigan law, including the duty to expeditiously administer an estate or trust, and act in the beneficiaries’ best interests, among others. If an administration challenge is brought, the actions of the fiduciary will be scrutinized, and recovery may be made



against the fiduciary personally if a breach is found.

Challenges may also arise related to assets that pass by beneficiary designation. These are assets that transfer upon the decedent's death outside of the decedent's estate or trust. Examples include life insurance proceeds, retirement benefits, and land transfers under certain deeds. Like the estate planning documents themselves, these transfers can be challenged for a number of reasons including lack of capacity or undue influence related to their execution. In some cases, it may be discovered that instruments transferring these assets were created under suspicious circumstances, and that the fiduciary and beneficiaries have a shared interest in challenging their validity.

Timing is another important consideration. Statutes of limitation preclude actions that are not brought within required timeframes. The window for challenging the validity of a trust, will, or beneficiary designation varies depending on the instrument. Likewise, timing of a breach of fiduciary claim will likely depend on the type of breach alleged.

Conclusion

Given the complexity and nuances related to estate planning documents, the laws governing those documents, and the legal procedures related to challenges to those documents, both fiduciaries and potential challengers should work with legal counsel to help navigate these issues. The best way to reduce costs related to disputes, avoid being precluded from bringing a claim by a statute of limitations, or avoid disputes altogether, is to obtain advice as early as possible.

Growing an effective estate planning strategy is crucial to ensure there are no disputes when a loved one passes. Contact Warren Krueger at 517.371.8236 or at wkrueger@fosterswift.com for help and answers to questions you may have regarding how this article applies to your farming operations.

Warren H. Krueger, III, practices in the areas of probate litigation and civil litigation involving estates and trusts, estate and trust administration, and real property matters.

This article does not constitute legal advice and should not be relied upon as such. As every factual situation is unique and experienced counsel should be consulted with regard to legal rights or obligations in any particular situation before taking any action.