

When preparing an estate plan, there are two broad categories of options for distributing a person's assets after death: probate and non-probate transfers. Probate is the process of administering a person's will; and, due to the time, costs and complexities involved in probate, many people choose to structure their estate plans predominantly using non-probate transfer methods.

However, while non-probate transfers can streamline the process of administering a person's estate, they bring their own unique set of challenges. As a result, non-probate transfers will often lead to disputes during the estate administration process.

Why Would Someone Challenge a Non-Probate Transfer?

There are a variety of reasons why an heir, beneficiary or creditor may seek to challenge a non-probate transfer. For example, an heir or beneficiary may believe that he or she is entitled to a share of the decedent's estate that has purportedly been left to someone else through a trust, insurance policy, or other non-probate transfer. Or, a creditor may assert that the decedent's use of a trust improperly diverts assets to a surviving family member. These are just two of countless examples that all more or less boil down to the same fundamental issue: parties with competing interests seeking different outcomes with regard to the interpretation or enforcement of the decedent's estate plan.

What are the Grounds to Challenge a Non-

Probate Transfer?

Depending upon the specific facts and circumstances involved, there are potentially a number of different grounds to challenge a non-probate transfer in Texas. Some examples of potential claims in estate litigation include:

Undue Influence – If a person was coerced into making a bequest in his or her estate plan through a trust or other non-probate transfer, legitimate heirs and beneficiaries may have grounds to have the transfer set aside on the legal grounds of “undue influence.”

Incapacity – If a person is “incapacitated” at the time he or she executes a non-probate transfer (and therefore legally incapable of making certain binding decisions), the transfer may be unenforceable.

Fraudulent Conveyance – Under the law of fraudulent transfers, there are restrictions on when and why a person conveys assets to a trust. If the funding of a trust constitutes a “fraudulent conveyance,” then the trust’s assets may be accessible by creditors and others having a valid interest in the decedent’s estate.

Breach of Fiduciary Duty – Trustees have a legal obligation, known as a “fiduciary duty,” to administer trust assets in accordance with the terms of the trust. If a trustee wastes trust assets, fails to account for trust assets or distributes trust assets improperly, the trust’s beneficiaries may have grounds to pursue legal remedies through estate litigation.

Competing Interpretations – Oftentimes, disputes will arise because interested parties have differing interpretations of the decedent’s estate plan. From disagreements over the terms of a trust to ambiguities regarding which estate planning documents control over others, these types of disputes are among the most-common issues leading to estate

litigation.

Speak with an Estate Litigation Lawyer at The Nordhaus Firm

The estate litigation attorneys at The Nordhaus Firm provide experienced legal representation for disputes involving probate and non-probate transfers. If you have questions about your legal rights and would like to speak with a lawyer in confidence, please call our McKinney, TX law offices at (214) 726-1450 or contact us online to schedule a free consultation.