

Estate litigation is an expansive category covering many different types of litigation. Here are some of them:

Contests. This type of lawsuit is brought when an heir—a person who would receive property in the absence of an estate plan—seeks to undo a deceased person’s estate plan. A contest can involve a Will, a Trust, or both. There are a number of reasons that an estate plan can be contested:

- The instrument was not executed (signed and witnessed) so as to comply with state law requirements.
- The person making the estate plan did not have the testamentary capacity to execute the documents. Translated, this means that the testator did not have the mental capacity to appreciate what he or she was doing.
- Undue influence can also be argued, which, as the name suggests, argues that an individual in a position of trust improperly influenced the deceased into making an estate plan they would not otherwise have made.

Inter-Vivos Transfers. These are disputes regarding transfers made while the deceased was still alive. Make no mistake, a person can certainly transfer his or her property as he sees fit. However, when a party makes this claim, they are arguing that the transfer is not a transfer the deceased would have made but for some impermissible circumstance. Usually, the complaining party is arguing the transfer was the result of undue influence, duress, or even outright fraud. The type of transfers that come under scrutiny are numerous, but regularly involve the emptying of savings accounts or the transfer of a person’s home. The person bringing the claim is attempting to bring the transferred property (or its value) back into the deceased’s person estate to be distributed in accordance with the overall estate plan.

Mismanagement of Assets. This is the subject of much litigation. It is a claim against a Trustee for failing to manage the assets in the Trust appropriately. It is brought by the beneficiaries of a Trust; sometimes legitimately, sometimes because the beneficiaries feel entitled and combative. Second-guessing the Trustee usually occurs after there has been a financial downturn with the assets or when there has been a missed upswing. There may also be issues were the Trustee does not have familiarity managing a type of asset or fails to monitor the property. Real estate, businesses, and life insurance can be especially tricky and cause problems if the Trustee does not have experience managing them.

Breach of Fiduciary Duties. Trustees, Executors, and Agents under Powers of Attorney act in a fiduciary capacity, meaning they have obligations to act in a trust-worthy manner. The fiduciary must act in the best interest of the person to whom they owe the obligation, the fiduciary cannot exercise their authority to benefit him or herself, and usually the fiduciary is not permitted to engage in acts of self-dealing, such as buying property over which they have control.

