A Guide To: How to Challenge a Trust in Michigan

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The death of a loved one is a difficult and emotional event. In addition to dealing with the loss, family members, friends and/or trusted advisors are tasked with settling the decedent's final affairs, which, in many instances, includes the disposition of the deceased individual's property. Although there are a number of options available to an individual for disposing of one's property upon death, frequently, individuals choose to establish "revocable living trust agreements" (for purposes of this article referred to as a "trust") to avoid probate and dispose of their property.

What is a Trust?

A trust is a fiduciary arrangement under which the creator of the trust, the settlor, expresses a desire for a third party, the trustee, to hold property in trust for the benefit of a third party, the beneficiary. A trust agreement is typically a written legal document under which the settlor instructs the trustee on exactly: (i) how, when, and for what purpose the trust property is to be utilized for or invested; and (ii) how, when, and to whom the trust property is to be distributed. In a nutshell, think of a trust agreement as the script the trustee must follow in administering the trust property for the benefit of the intended beneficiaries.

How Do Trusts Work?

Once established, the trust is funded (or, more simply put, the settlor transfers property to the trust). For example, a settlor may execute a deed conveying his or her residence from the settlor to the trustee of the trust. By executing the deed, the settlor will have effectively conveyed legal ownership in the residence to the trust, so that the property may be managed by the trustee in accordance with the trust agreement. Other ways to fund a trust include changing the owner of a bank account or brokerage account to the trust, identifying the trust as a beneficiary of life insurance, or by assigning a business interest to the trust. Once funded, the trustee of the trust may manage the trust property for the benefit of the beneficiaries.

In instances where the settlor establishes a "revocable living trust", during his or her lifetime, it is generally the case that the settlor, trustee, and beneficiary are the same person. In such instances, the settlor may amend, revoke, or restate the trust agreement at any time during his or her lifetime; provided, the settlor maintains testamentary capacity. Typically, the trust provides for the distribution of trust income and principal to the settlor during his or her lifetime to the extent assets are transferred (or funded) to the trust during the settlor's lifetime. In essence, the settlor will continue to be treated for all purposes as the owner of any property transferred to the trust during his or her lifetime. Following the settlor's death (or incapacity), the Trustee is tasked with administering and distributing the trust property to the beneficiaries in accordance with the applicable provisions of the trust.

What Happens When the Settlor of the Trust Dies?

When the settlor dies, a revocable trust becomes irrevocable, meaning it cannot be changed. Although trust agreements are intended to be kept private during a settlor's lifetime, the trustee is required to provide notice of the existence of the trust to the beneficiaries following the settlor's death. Accordingly, individuals often do not become aware of their beneficial interest in the trust, or lack thereof, until after the settlor's death. Typically, individuals desire their property to pass immediately to family members, friends, and/or cherished charitable organizations upon death. In such instances, property is distributed to the beneficiaries without complications. However, on occasion, those expecting to receive property from a deceased individual are surprised (and disappointed) to learn that the decedent "allegedly" had an alternative plan.

This article is intended to provide you, the reader, with a proposed plan of action for instances when the dispositive terms of a trust agreement: (i) substantially deviate from the comments or remarks made by a decedent; or (ii) substantially deviate from prior versions of a decedent's estate planning documents. Such deviations are particularly concerning when the settlor executed the trust during an interval of alleged "incapacity," or when the settlor was vulnerable (and susceptible to "undue influence").

As mentioned above, although, generally, an individual will direct the disposition of his or her property to family members (a "natural disposition"), Michigan case law clearly supports the proposition that an individual may disinherit his or her family members and instead make arrangements to leave their property to a charity, unrelated third party (i.e. care giver, friend, business associate, political group), or even a pet. Michigan case law also supports the proposition that absent incapacity, undue influence, duress, fraud, or mistake, courts should refuse to disrupt the settlor's intentions as stated in the trust agreement, and, further, that absent a showing of legally adequate proof, a presumption exists as to the validity of the document. Simply put, the Michigan courts give great deference to the settlor's wishes and will not invalidate a trust merely because a particular individual was disinherited or the distributions were viewed as unfair or disproportionate.

Something is Not Right. Now What?

On occasion, however, facts and circumstances exist that support a legal action to challenge the validity of the trust agreement itself. Such scenarios include instances where: (i) third parties have unduly influenced a susceptible/vulnerable individual to revise his or her trust to provide the influencer with a substantial beneficial interest in the trust or to place the influencer in a position of power and control; (ii) a wrongdoer orchestrates a scheme to fraudulently divert funds from the decedent to the wrongdoer; or (iii) at the time of execution, the decedent lacked the requisite testamentary capacity necessary to execute the trust agreement. From a legal perspective, the validity of a trust may be challenged for the following reasons:
The trust was not created in accordance with the formal requirements set forth under the Michigan Trust Code or Michigan common law;
The settlor of the trust lacked testamentary capacity to establish the trust at the time of execution;
The trust was the result of "undue influence" by a third party;
The creation of the trust was induced by fraud or misrepresentation;
The creation of the trust was induced by coercion or duress;
The trust is a forgery; or
The creation of the trust was the result of a mistake of fact (i.e. a trust could be invalidated where a settlor is illiterate and unfamiliar with legal documents and executed the document without understanding its legal effect).

How Do I Challenge a Trust?

To contest the validity of a trust, a challenger must have standing. In other words, only certain parties may challenge a trust. Persons with standing to challenge the validity of a trust agreement include heirs of the decedent, beneficiaries under earlier iterations of the trust, and nominated or incumbent fiduciaries of the deceased individual's estate or trust. The decedent's heirs are those individuals who, based on Michigan law, would have received the decedent's property had the decedent died without a last will and testament or trust (a spouse, if living, otherwise, descendants of the decedent).

If an individual has standing to challenge the trust, and the facts and circumstances warrant a challenge, the challenger must bring his or her action before the appropriate probate court within a certain period of time - otherwise, the challenger will be foreclosed from pursuing the case. Specifically, a challenge as to the validity of a trust must be commenced within the earlier of: (i) two (2) years after the settlor's death; or (ii) six (6) months after the trustee sent the person notice. Any person considering a challenge should first retain an attorney experienced in probate litigation to properly evaluate the case, perform initial due diligence, and advise the challenger of his or her rights and the merits of a potential challenge to the trust. It is also important to know that some trusts contain provisions that seek to disinherit any beneficiary who challenges the trust.

Although contesting a trust can be a complicated and difficult process, in some instances, legal action becomes necessary and, in such situations, the assistance of an experienced attorney is essential in order to provide you with the guidance, advice and expertise required to properly contest a trust in probate court. For a consultation with a Clark Hill attorney regarding a probate litigation matter, please call Thomas E.F. Fabbri at (248) 988-5856 | tfabbri@clarkhill.com, Mallory A. Kallabat at (248) 530-6342 | mkallabat@clarkhill.com, Jonathan M. Martone at (248) 988-1823 | jmartone@clarkhill.com, Nicholas E. Papasifakis at (248) 530-9132 | npapasifakis@clarkhill.com or another member of Clark Hill's Estate Planning & Probate Litigation practice group. For more information on probate related litigation matters, please visit our website at clarkhill.com.

1Specifically, assets may pass: (i) by an outright gift; (ii) by operation of law in a joint ownership arrangement (i.e. a joint bank account or joint tenants with rights of survivorship with respect to real property); (iii) by operation of law (i.e. a beneficiary named on a life insurance policy or payable on death provisions in a brokerage account); (iv) pursuant to the dispositive terms of a trust agreement; (v) pursuant to the dispositive terms in a Last Will and Testament; (vi) pursuant to a Deed; or (vii) in accordance with Michigan intestacy laws if none of the other options are utilized.

2It is recommended that the settlor of the trust fund the trust during his or her lifetime in order to avoid probate of assets left in the settlor's own name. If a trust is not funded during the settlor's lifetime and a pour over will exists, the personal representative of the settlor's probate estate may be tasked with funding the settlor's trust.

3For example, assets held by a revocable living trust are not protected from creditors of the settlor.

4In most instances appropriate venue would be in the county in which the decedent last resided, the county in which the trust is being administered, or in the county in which the trustee registered the trust.

5The notice must inform the challenger of: (i) the trust's existence; (ii) the date of the trust instrument; (iii) the date of any amendments known to the trustee; (iv) a copy of relevant portions of the terms of the trust that describe or affect the person's interest in the trust, if any; (v) the settlor's name; (vi) the trustee's name and address; and (vii) the time allowed for commencing a proceeding.