

# How to Avoid Probate Litigation in New York City

When someone dies with or without a will, the estate may be subjected to probate before any assets are distributed. Probate is essentially the process through which a person's will is verified to be legal and valid. When someone dies intestate (without a will), their estate will also go through probate, with state law being used to determine who inherits what.

## What Occurs During the Probate Process?

When an estate is subjected to probate, the probate court will:

- Identify assets and debts;
- Decide how to pay taxes, debts, and other expenses;
- Distribute assets according to the will, or following state law if no will existed.

Probate can take a few weeks if the estate is small and no issues arise, but the process can become long, contentious, and expensive for more complex estates, or for those involving disputes. If anyone with a valid claim to assets decides to contest any part of a will or trust, the process can drag on for quite some time. In these situations, probate litigation may become necessary.

## What is Probate Litigation?

Fortunately, most probate matters are standard and remain uncontested. But if any legal contest arises about the terms of a will, the issue may need to be resolved in court. These problems may appear after the estate owner's death, but they can also occur in a living will. When an individual is deemed to be mentally incapacitated, issues may arise over powers of attorney, guardianship, and decisions regarding health care.

Common causes of probate litigation include:

- Challenging the validity of a will;
- Challenging the wording in wills or trusts;
- Lawsuits over trust modification or reformation;
- Lawsuits to terminate a trust that is no longer practical;
- Contests about whether or not a guardian should be appointed;
- Lawsuits about a guardian who is not properly or adequately performing his/her duties;
- Lawsuits brought by beneficiaries who claim a fiduciary is not acting in accordance with the law.

As probate litigation almost always involves family disputes, emotions can be extremely high. Risk factors for litigation include second and subsequent marriages, sibling rivalry, and any type of family dysfunction.

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Probate litigation can occur in even the simplest and most straightforward estates, but it is relatively uncommon in these situations. Most probate litigation involves more complex estates, or any size estate involving a dysfunctional family dynamic. Below are some of the most common causes of probate litigation, and how to avoid them:

- There is an increased risk of probate litigation when individuals marry more than once without a pre-nuptial agreement. As such, insisting on a pre-nup before a second or subsequent marriage is an excellent way to avoid probate litigation for your beneficiaries.
- If you have a complex estate plan that does not treat all children the same, for example, or that omits a child from your estate altogether, your probate litigation risk increases significantly. In these cases, it is of the utmost importance to ensure that your wording is exceedingly clear. An experienced New York estate planning lawyer can help. Contact Lissner &

Lissner LLP today at [\(212\) 307-1499](tel:(212)307-1499) for a free and confidential consultation about your case.

- An overly detailed trust can also lead to probate litigation. While details and information are important, excessive details can result in ambiguity and leave parts of your trust open to interpretation.
- A poor fiduciary is another common cause for probate litigation. When your chosen fiduciary is a poor communicator, dishonest, easily influenced by others, or procrastinates, or if he/she is unable to follow instructions, the likelihood of your estate ending up in probate litigation increases. Choose your fiduciary wisely. It should also be noted that when two people have been chosen to act as co-fiduciaries, there is a greater chance of a dispute arising than when only one fiduciary is named.
- If you married more than once, you may leave behind a surviving spouse, as well as surviving children from a previous marriage. By setting up a life insurance trust, you can effectively separate the interests of your spouse and children, and provide for both upon your passing.

## Contact Lissner & Lissner LLP Today

If you are involved in a probate dispute, the skilled legal team at Lissner & Lissner LLP can help. We have worked with countless NY families to preserve and protect their wealth, ensure that their loved ones are provided for, and resolve disputes in the quickest, most affordable, and least painful way possible.

Our highly-knowledgeable [New York City probate lawyers](#) work with individuals and families at all stages of the planning process, and from all backgrounds and income levels. Whether you're single and buying a starter home, or preparing for retirement with millions in assets and a dozen grandchildren, we can help you ensure that your estate planning strategy aligns with your unique goals and objectives. Contact Lissner & Lissner LLP Today at [\(212\) 307-1499](tel:(212)307-1499) for a confidential consultation about your case.