

What Is Probate Court Litigation?

“Contested matters” handled by probate courts are considered “probate court litigation”. Probate court litigation includes a variety of situations, including, but not limited to:

- will contests (*a legal contest to challenge to the validity of a will*);
- will and trust construction suits (*a request that the court make a determination regarding the legal meaning or effect of particular wording used in a will or trust*);
- guardianship and conservatorship contests: (*Guardians make decisions about the protected person’s body (e.g. medical decisions, living arrangements etc;) while Conservators handle the protected person’s financial matters*);

These contests often debate:

(1) whether the allegedly incapacitated person, also known as the “protected person”, lacks sufficient mental capacity to handle his affairs, for which he failed to address through properly executed powers of attorney; or

(2) the protected person executed powers of attorney but an “interested party” disputes the validity of those planning documents and/or argues that the chosen person is abusing the power granted to him/her;

- trust instruction (*a proceeding wherein a party (e.g. usually the trustee or a beneficiary) requests the court to interpret the trust or a matter controlled by the trust and to give instruction as to how the trust matter should be interpreted, applied or resolved*);
- trust modification and trust reformation suits (*a proceeding wherein a party requests the court to alter or to amend the terms of a trust because something is wrong with the trust’s wording*);
- trust termination suits (*a proceeding to terminate a trust because the material purpose of the trust no longer applies, has been fulfilled or can no longer be fulfilled*); and
- breach of fiduciary duty actions (*a proceeding, generally instituted by beneficiaries or other “interested parties”, against an executor, trustee, guardian, or agent (known as fiduciaries) alleging that the fiduciary failed to act in accordance with the law and/or the instrument appointing her thereby causing damage to the beneficiaries*).