

Overcoming Disinheritance

DECODING THE ESTATE PLAN TO FIND A PATH FORWARD



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About the Author



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As co-chair of Reminger's estate, trust, and probate litigation practice group, Adam has an incredibly broad working knowledge of the areas of law that touch upon the disputes he routinely handles, coupled with a rare ability to quickly capture the factual essence of your claim. Adam serves as the lead trial attorney to successfully pursue and defend hundreds of estate and trust disputes each year.

He has tried many high stakes cases to verdict: will and trust contests, executor and trustee removal actions, interpretation of wills and trusts and ambiguities, accountings, breaches of fiduciary duty, and claims seeking to void gifts and beneficiary designations.

Read Adam's first e-book, *Should I Challenge My Inheritance?*, **[here](#)**.

About Reminger



Results. Period

Reminger Co., L.P.A. is a full-service law firm with fourteen offices throughout the Midwest. With more than 150 attorneys collectively, Reminger's practice areas include all aspects of litigation, along with corporate, tax, real estate and probate matters. Our fundamental objective is to obtain the best possible results for our clients in the most practical and efficient manner possible.

For over forty years we have represented executors, administrators, trustees, heirs, beneficiaries as both plaintiffs and defendants in lawsuits and contested proceedings involving trusts and probate estates.

These cases include will contests, claims of intentional interference with expectations of inheritance, breach of fiduciary duty cases involving fraud or negligence under the Ohio Trust Code and Ohio Probate Law, as well as the misuse and/or abuse of powers of attorney.



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Introduction

In my previous e-book and blog series, ***Should I Challenge My Inheritance***, I reviewed the key considerations to make when deciding to dispute your inheritance. Ultimately, the value of an inheritance controversy depends on a lot of things, including the degree to which you can establish an undue influence or lack of capacity claim, coupled with the amount you could recover if your claim were successful.

Whether you have reason to believe you have a good case is just one question. The other, and perhaps more important, question is whether the value of the item to be recovered is sufficient to warrant the cost, emotion, and effort of the pursuit.

In this e-book, I will discuss the anatomy of an estate plan to help you estimate the value of an estate and examine how inheritances can be diverted by bad actors.



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The Initial Assessment of an Inheritance Controversy

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To assess if you have a good case, you must first intuit whether the anticipated inheritance was diverted by bad conduct. Are you suspicious that the benefactor was incompetent or susceptible to the control of another? Was the person who received the anticipated benefit aggressive, controlling and/or, manipulative towards the benefactor?

To better understand what could be involved in pursuing a claim to recover an inheritance, ask yourself:

- Do I have good faith belief that there was a cognitive decline or other factor that could suggest a lack of capacity or susceptibility to undue influence?
- How far would I want to go in dispute?
- How much might I be willing to pay an attorney to discover what happened?

Time is another important concept in inheritance controversy cases. How can you determine whether any given transaction was the product

of undue influence, lack of capacity, or breach of trust, if you don't know when the right in the inheritance to another was established? The concept of "time", meaning when the event of disinheritance happened, plays a large role in the case. Time is important because, with any person who suffers from cognitive decline, there is a point in time that exists before the onset of decline when that person would not be susceptible to undue influence or arguably lack capacity.

For example, if you believe that your parent developed symptoms of Alzheimer's disease or dementia within the last two years, but twenty years earlier, your mom named your sister as the sole beneficiary of her large brokerage account, you will likely not have a strong case based on lack of capacity. Alternatively, if you learned the account was established by your sister as an agent under a power of attorney granted to her by your mom after she suffered a major stroke, then you might have a good claim based in breach of fiduciary duty or undue influence.

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Gathering the Necessary Information to Assess Your Inheritance Claim

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It can be challenging to understand how to assess whether you can reasonably prove a claim sufficient to restore your inheritance. For example, you may be in the dark and have no idea what the full scope of your father's assets at the time of his death. Yet, you are convinced that your oldest sibling, who is now driving around in a brand-new car and just returned from an expensive vacation did something that caused your disinheritance.

The fact that you have no information about the size or scope of your father's global wealth should not, in many circumstances, deter you from exploring the potential of pursuing a claim. To the same extent, you cannot divorce the realities of cost of pursuit from the decision-making process.

My partners and I are regularly approached by children, grandchildren, and others suspecting that they have been disinherited.

The "disinherited" routinely want to understand what might be involved in pursuing a claim to recover an inheritance, and our goal is to give the potential client reasonable advice so that the client can make informed decisions about whether to move forward.

The more information you know when approaching a lawyer to assess your inheritance controversy, the better able your attorney would be able to assess the value of further investigation or pursuit of claims.



In deciding how to move forward, I often ask my clients these questions:

1. What information do you have that would give rise to a reasonable belief the benefactor was cognitively in decline or taken advantage of?
2. What is the reasonable estimated value of the global wealth of the benefactor?
3. What percentage of the global wealth would you have expected to transfer to you? (for example, are you an only child about to do battle with the maid? Or are you one of 10 children)?
4. What was the vehicle of the disinheritance? Was the vehicle a will, trust, beneficiary designation, gifting, or some combination thereof?
5. What might it cost to pursue? Is the cost of pursuit even predictable?

Many, if not most, persons who believe they have been disinherited come to us possessing little to no information. When you possess limited information, the ability to project costs of pursuit, the value of pursuing claims, and predicting the chances of success is similarly limited.

It is also helpful to understand the nature of the person who you believe caused your disinheritance. Some defendants like to put up unreasonable roadblocks which adds costs to pursuit.

In my *Probate Law Journal of Ohio* article ***Representing a Beneficiary or Heir in the Quest of Information Necessary to Assess Rights in an Estate or Trust***, I address the subject of procedures and strategies available to force the production of information needed to assess the viability of an inheritance claim.

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The Anatomy of an Estate Plan - Global Wealth

The Anatomy of an Estate Plan - Global Wealth

There are a few basic points of information you should possess to decide whether sufficient economic value exists to warrant the risk of going forward with the expense of an investigation or pursuit of a lawsuit.

- Historical knowledge of the decedent's employment. Was your parent a doctor, lawyer, factory worker? If they were in a high paying profession, that is a positive indication of value.
- Did your parent own a home? Usual records such as tax value and whether there is a mortgage can be found as a matter of public record.
- Similar indications could be knowledge of a recent inheritance, lawsuit settlement or lottery winnings.
- Was your parent a frugal person who tended to save his or her paycheck?
- Has there been significant medical or long-term care expenses, or other spending habits that would reduce a likely inheritance?

After exploring the potential of value, you then want to understand how that value translates into an amount to which you would be entitled if you win a case.

Having a handle on the things that implicate your chances of success and value, it is essential to understand what information would be helpful to know to be able to decide on taking the step to pursue a claim for recovery of your inheritance.





Global Wealth

When you think of the inheritance your parent has available to leave you and your siblings, you probably think of “global wealth”.

For example:

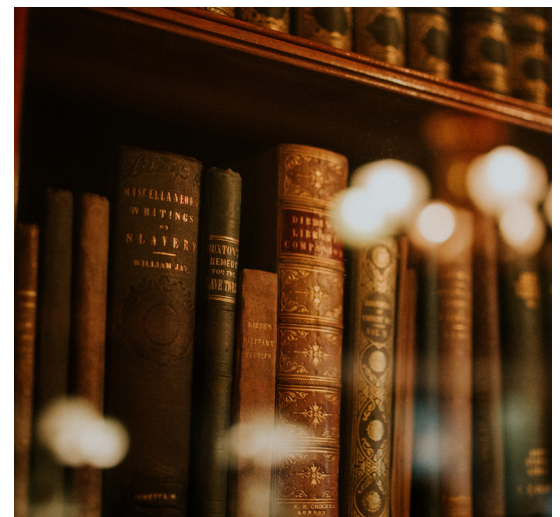
- You know your parent owned a house. If the house is worth \$200,000 but is subject to a mortgage with an outstanding balance of \$150,000, then its value is \$50,000, not \$200,000. If that house needs to be sold to realize value, then you must consider the costs of sale which could range between 8-12 %, more or less.
- If your parent owned a brokerage account where they invested every spare dollar, then you would expect that the money in that account has some value unless your parent had significant expenses such as long-term care.

- Your parent is likely to have also had a checking and savings account and maybe life insurance or an annuity.
- You also likely know whether your mother or father owned all or some part of a closely held business that could hold potential value and produce income streams.

Thesetypesofassets,whencombined, and after considering your parent’s debts and liabilities, constitute the net worth or “global wealth”.

To fully evaluate the circumstances of a perceived disinheritance, you need to understand the anatomy of an estate plan, meaning the manner, planning vehicle, and mechanisms by which your parent's individual assets were owned and controlled during their life and how the assets would have been diverted away from your inheritance.

Inheritance questions are intrinsically connected to the form in which one owns property. For instance, assume your parent had a sizeable brokerage account consisting of stocks, bonds, mutual funds, and cash. The financial institution that houses the investments require contracts of account that set forth the terms by which the asset held therein is managed, controlled, and/or owned. Simply, the contract of account, and any beneficiary designations, will identify the owner of the account and control how the investment held in the account will be distributed at death. Therefore, a component of a person's estate plan is the titling of assets.



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The Anatomy of an Estate Plan - Asset Titling

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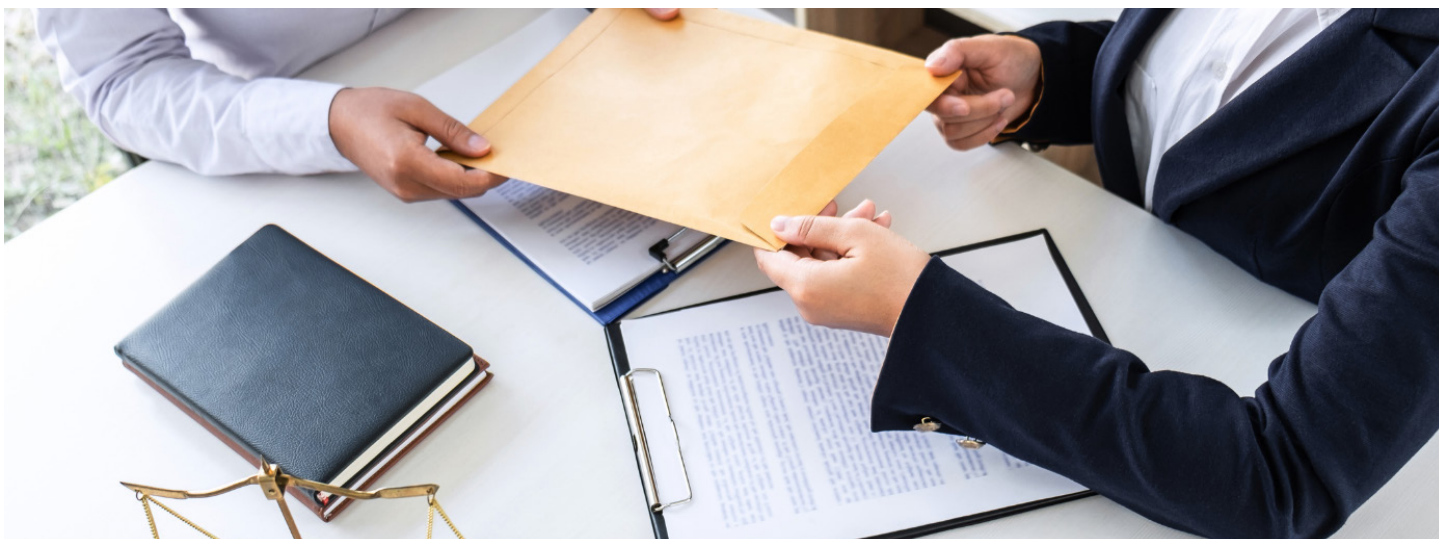
Asset titling is critical in assessing the potential and value of an inheritance claim. Without understanding asset titles, or beneficiary designations, it is difficult to understand how the asset was supposed to transfer at death and, whether or if the asset will be controlled by typical estate planning instruments such as a last will and testament or a trust.

Types of titling often found in inheritance claims:

- 1. Individual Account-** A bank or brokerage account is titled exclusively to the individual. During the life of the individual, the account is only used by the individual at their sole discretion.
- 2. Joint Account with Rights of Survivorship-** This type of ownership of an account creates immediate ownership interest in the joint tenant. In other words, when the depositor (the person who deposits the money into the account) creates and funds the account assigning joint ownership to that account, the

non-depositing owner is vested with immediate rights (with some complicated exceptions) to use the joint account to exhaustion. Upon the death of the depositor, the joint tenant, if the account includes rights to survivorship features (either by bank contract or operation of law), inherits the remaining funds. A common mechanism of disinheritance is when a bad actor works to secure their name on an account of the depositor as a joint tenant with rights of survivorship.

- 3. Payable on Death or Transfer on Death Forms of Ownership** - In the example of the bank or brokerage account, the owner can assign a beneficiary who takes what remains in the property at the death of the owner. The beneficiary needs to survive the owner, and, upon the owner's death, the beneficiary gains the account asset as that person's inheritance. This mechanism is also frequently employed by bad actors to gain an inheritance.



1. In Trust - Many people have executed trust agreements, the terms of which dictate how the asset will be managed during the life, or on the death or incapacity of the settlor of the trust. Thus, if your mother, for instance, created a trust, she may decide to fund one or more of her bank or brokerage accounts into the trust, and she would accomplish that by naming the trustee as the owner of the account. For example, an account owned in trust might be titled: Jane Doe, Trustee of the Jane Doe Trust under the date of Jan 1, 2022. The successor trustee of the trust takes over the legal title ownership of the account upon the death of the settlor, but is subject to the terms of the trust, with the equitable owner being the beneficiary(s) of the trust. If you have been disinherited, the mechanism employed under these circumstances would usually be accomplished through the creation of, or changes to the trust, under which the account is managed.

The titling concept also applies to other forms of property such as real estate, closely held businesses, and vehicles to name a few. Evaluating the potential of an inheritance controversy, therefore, requires an understanding as to how and when the asset at issue was titled in such a manner that excluded you from receiving it at death. Once learned, you can then begin to deconstruct what happens to an asset if it were to be successfully challenged.

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The Cascade: Deconstructing an Estate Plan to Potentially Restore Your Inheritance

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Asset titling is of primary concern in the pursuit of an inheritance claim. In some inheritance claims, the title might be the sole aspect to be challenged.

For example, your father, while healthy and strong, established his brokerage account titled in his sole name, but then affixed a beneficiary designation that named his three children as equal payable on death beneficiaries. If he were to die without any changes to the beneficiary designation, you and your two siblings, at your father's death, would inherit the account.

But, if you learn that a day before your father died, while he was in a nursing home, your brother coerced your father to sign a beneficiary designation naming your brother as the sole beneficiary of the brokerage account, then you and your other sibling would only need to challenge the creation of the new beneficiary designation to restore your inheritance. If the value of the account at the time of death was \$300,000.00, the value of your claim

would be \$100,000 (or one-third of the account).

Your father's will and trust would not matter and the existence of either, no matter if you are a beneficiary or not of the will or trust would have no consequence.

Unfortunately, rarely are inheritance claims so simple as to only involve a single beneficiary designation. Assets that are titled to the individual and without beneficiary designation or joint ownership, at death, are typically referred to as "probate assets".

When people talk about trust agreements or beneficiary designations, they often describe such things in the parlance of estate planners, as "probate avoidance techniques".

A probate asset passes by way of intestacy if there is no will or, by the terms of a last will and testament if the decedent died "testate", meaning died with a will.

A person dies “intestate” if they died without a will, and typically, the state in which the person died will have enacted a statute that sets forth the order of people who qualify as the “intestate beneficiary”. For instance, Ohio has a statute in the form of Ohio Revised Code Section 2015.06 which describes who inherits from an intestate estate in descending order: the spouse if the children are the product of their marriage, the children if no spouse, etcetera.

The interplay between an account with a beneficiary designation and a will that was executed under bad circumstances, and its implication on an inheritance claim, can be demonstrated by this simple example. Your father, known to be suffering from Alzheimer’s disease has a full-time, paid caregiver. The caretaker drives your father to the bank where he designates the caretaker as his beneficiary. Then, the caretaker drives your father to a lawyer, where your father signs a will naming the caretaker as the only beneficiary. Under this example, if you are the only child, then you would need to successfully win both a challenge to the beneficiary designation and a challenge to the

will before you would be in place to inherit the asset. You must win both claims to benefit.

A second example of the interplay between asset ownership and a will that disposes of probate assets is one where the parent, out of convenience, adds a child to an account without realizing that the naming of a child as a joint tenant to an account, can serve to disinherit the other child. In this example, there is one mom and two children. Mom has one asset, a bank account containing exactly \$100,000, titled exclusively to mom, meaning there was no joint tenant and no beneficiary designation.

The next day, mom takes her two children, a son, and daughter, to the family lawyer to write her will. Mom tells the lawyer, in the presence of her children, that she wants her bank account to pass equally to her children under her will. The will is executed. Absent any changes to the will or changes to the title to the bank account, when mom dies, the bank account becomes a probate asset. The executor claims the asset and, after paying debts and expenses, distributes the asset to the two children as equal beneficiaries.

The day after Mom signs the will, however, the son, at mom's request, takes mom to the bank where she meets with a helpful banker. At the bank, they discuss how fortunate mom is to have such a loving son and that because mom is getting upwards in age, it would be easier for the son to help mom manage her account if the son is added as a joint tenant on the account. The son is then added to the joint account, and mom dies the very next day.

Despite mom's clearly stated intent and belief that son and daughter would inherit equally, the title to the account controls and daughter has just been disinherited.

One could imagine how difficult it might be to fully assess the value and potential of an inheritance claim. There are usually multiple accounts. Sometimes there are a series of wills and a series of beneficiary designations.

There might also be trust agreements and modifications to trust agreements, and family members that die in unpredictable order which particularly adds complexity in second family situations.

Essentially, if you understand the anatomy of an estate plan, you can begin to ask questions that will build the context under which accounts were established, beneficiary designations came to be executed or wills prepared, to assess whether the challenge to any one of them (or combination thereof) will ultimately cause the asset to fall into your pocket as a right to an inheritance.

Understanding the ownership and passage of assets at death, however, is only one component of an investigation into a right to an inheritance.



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How Bad Actors Can Divert Your Inheritance

How Bad Actors Can Divert Your Inheritance

Generally, when advising clients on the potential of their inheritance claims, I think about the many ways a person could take financial advantage, and by bad conduct, divert assets from your inheritance beyond the standard will or beneficiary designation. A non-exhaustive list of the ways your inheritance can be diverted is as follows:

- 1. Gifting** - Sometimes, accounts are depleted by an overactive beneficiary coercing gifts under bad circumstances. Each gift serves to diminish what would have been available at death. Adding a layer to the complexity, what if the gift came from an account that was exclusively established for the benefit of the recipient of the gift? The challenge is now three-fold: the gift would need to be scrutinized, the account title would need to be assessed, and if the will was also changed, then the will would need to be challenged.
- 2. Power of Attorney Abuse** - An agent under a power of attorney may engage in transactions that ultimately benefit themselves to the exclusion of other would-be inheritors. Self-dealing transactions can be accomplished in many ways. For instance, an agent might use the power to gift to him or herself or may buy an asset of the decedent for less than fair market value, forgive or make a loan for less than fair consideration, and potentially change beneficiary designations as several examples. Each transaction might need to be scrutinized as to whether it violated the law, but then if the transaction(s) were voided, would the asset flow to you or be held up for the need of other challenges, such as to a will.
- 3. Breach of Trust** - Did the person believed to have diverted your inheritance serve in the capacity as trustee of a trust and misuse trust assets for his or her own benefit?
- 4. Misuse of Credit Belonging to the Decedent** - We often see assets diverted in the form of using credit cards or mortgaging the decedent's home and using the proceeds for their own purposes.
- 5. Execution of wills, trusts, amendments, and beneficiary designations** under circumstances that constitute undue influence or lack of capacity.

Conclusion

Inheritance claims can involve a significant amount of emotion and stress. The more information you know, the more likely a reasonable assessment as to the potential of your claim can be made.

A lawyer's initial assessment typically includes:

1. The potential of demonstrating actionable circumstances such as undue influence, breach of trust, lack of capacity, or fraud.
2. The value of the assets that are in dispute which impacts the determination of how much money you might want to spend in pursuit.
3. The manner and mechanism in which you were disinherited, including the procreation of wills, trusts, beneficiary designations and asset titling.
4. The lifetime transactions that diminished the date of death value of assets ultimately available for distribution.

If you find yourself hitting roadblocks in assessing the value and process involved in an estate controversy,

competent legal counsel can help you devise a plan to move forward. An attorney who understands the procedures that can gather information when none is reasonably otherwise available to you.

At Reminger, we understand that inheritance is not simply about money or property. It can also be about the memories that the property holds. A house can hold memories of a family over the years. A car can hold memories of family vacations. In addition to cherishing memories, inheritance is about honoring the wishes of your deceased loved ones.

Our Ohio inheritance dispute attorneys are here to help. We have decades of experience unraveling the true intentions of an estate plan. We have seen it all and know how to position you for the most favorable resolution possible and will also help you evaluate if you have a claim that is worth pursuing.



We are Here to Help

With over 100 years of collective experience, our lawyers have been helping people in Cuyahoga County, Lake County, Summit County, Franklin County and other areas of Ohio solve complicated estate and probate problems.

You can turn to Reminger's experienced Probate and Trust Litigation Practice Group to address any dispute that has arisen around a loved one's estate.

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