
CHAMBERS GLOBAL PRACTICE GUIDES

Private Wealth Disputes 2026

Definitive global law guides offering
comparative analysis from top-ranked lawyers

**USA – Washington: Law and Practice
& Trends and Developments**

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USA – WASHINGTON



Law and Practice

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Stokes Lawrence, PS has offices in Seattle and Yakima, Washington, and represents businesses including closely held entities and public corporations, as well as the families and individuals behind them. The firm's experienced attorneys combine deep legal knowledge with a personalised approach to meet each client's unique needs. Stokes Lawrence is home to the pre-eminent Trust & Estate Litigation team in the Pacific Northwest, handling a wide range

of matters including will contests, fiduciary disputes, guardianship and conservatorship matters, and high-stakes trust and estate litigation. As a majority women-owned firm, Stokes Lawrence is certified as a Women's Business Enterprise by the Women Business Enterprise National Council. The firm is a proud member of the National Association of Minority and Women-Owned Law Firms (NAMWOLF) and Lawyers Associated Worldwide (LAW).

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1. Overview of the Private Wealth Legal Landscape

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1.1 Court System

Washington's superior courts have original jurisdiction over private wealth disputes, probates, trusts, and guardianship disputes. Disputes involving trusts, estates, probates, and guardianships are typically handled in the superior courts' probate/guardianship division and are largely governed by Washington's Trust and Estate Dispute Resolution Act (TEDRA), which provides for procedures that supplement general civil rules.

Private wealth disputes related to family businesses or trusts arising out of marital relationships may be handled by the superior courts' family division or the civil or probate/guardianship division.

1.2 Arbitration and Mediation

TEDRA allows for both mediation and arbitration in private wealth disputes related to estates and trusts. Mediation is voluntary or can be court-ordered, and TEDRA provides for specific procedures and timeframes for requesting mediation and selecting a mediator. While mediation itself is non-binding, if it results in a written agreement, TEDRA allows for the agreement, or a memorandum describing the agreement, to be filed with the court, in which case the agreement will have the effect of a court order.

Arbitration is also available under TEDRA, and parties may petition the court to compel arbitration. While arbitration is binding, a party may appeal the final decision of the arbitrator to the superior court and request a trial de novo on all issues of law and fact.

Even when private wealth disputes fall outside the purview of TEDRA, Washington courts allow for medi-

ation, which can be voluntary but may also be a pre-trial requirement in civil and family law cases. Settlement agreements can be binding and submitted to the court. Arbitration may also be an option or expressly required per the terms of contracts or by the court in certain cases and when there is a particular amount in dispute. Arbitration awards are generally binding and enforceable via court confirmation but may be challenged in certain circumstances.

1.3 Legal Fees and Costs

While certain types of wealth disputes may have specific governing fee statutes (eg, will contests), the allocation of legal fees and costs in Washington trust and estate litigation is generally governed by RCW 11.96A.150. That statute which grants the court broad discretion to award costs and reasonable attorneys' fees from estate or trust assets, or from one party to any other party. In exercising its discretion, the court may consider any factors it deems relevant and appropriate, and these factors may (but need not) include whether the litigation benefits the estate or trust involved.

Trustees may pay attorneys' fees from trust assets when they are reasonably necessary for trust administration or incurred in defending the trust. However, a court may deny a trustee's request to use trust funds to pay legal fees regarding claims of misconduct, breach of fiduciary duty, self-dealing, and the like.

1.4 Forum Choice

TEDRA provides an attractive platform for litigation in Washington, as it provides for a streamlined, often cost-effective, and expedited process for resolving private wealth disputes related to trusts and estates.

1.5 Litigation Procedures and Techniques

TEDRA supplements general civil litigation procedures, rules, and techniques in private wealth disputes involving trusts and estates. TEDRA provides a specific summons, notice, hearing, alternative dispute resolution, and sometimes discovery processes. One litigation procedure of note with TEDRA is the ability to decide the case or specific claims on the merits at an initial hearing, which can occur as early as 20 days after service of the Petition. Cases and claims not resolved at the initial hearing may then be certified for trial, often on an expedited basis when compared with other civil matters.

2. Discovery and Evidentiary Considerations

2.1 Discovery

In Washington, discovery in private wealth disputes is governed both by the Washington civil rules and, if applicable, by statute under TEDRA. Discovery is generally available in TEDRA actions, and courts overseeing trust and estate disputes may allow broad discovery or limit it, depending on the nature and needs of the case.

Scope of Discovery

When a dispute proceeds as a formal court action, discovery typically follows standard civil practice. This allows parties to obtain relevant, non-privileged information necessary to evaluate claims and defences. In contrast, discovery is more limited in nonjudicial TEDRA proceedings, such as mediation or arbitration.

Discovery is often broader in disputes involving undue influence, breach of fiduciary duty, or asset valuation, where financial records and witness testimony are central. Courts may restrict discovery that is duplicative, burdensome, or disproportionate to the issues involved, particularly where estates are modest, or facts are narrowly defined.

Practical Impact

TEDRA's flexible approach to discovery promotes efficiency while preserving fairness. Courts can tailor discovery to the dispute, reducing unnecessary cost and delay while still allowing meaningful fact development.

2.2 Alternatives to Discovery

Washington State provides formal discovery mechanisms in civil and TEDRA proceedings. When formal discovery is limited or denied, evidence may be developed through other procedural tools such as pleadings, sworn declarations, financial accountings, expert reports, and live testimony submitted at hearings. Courts control the admission of evidence and assess relevance and reliability, ensuring decisions are made on an adequately developed record.

2.3 Privilege

Attorney-Client Privilege

Attorney-client privilege frequently arises in Washington private wealth disputes involving estate planning, trust administration, and related litigation. Communications between a client and counsel concerning wills, trusts, fiduciary duties, and litigation strategy are generally privileged if made for the purpose of legal advice and maintained in confidence. This protection applies during the client's lifetime and survives death.

Privilege becomes more complex when estate planning itself is at issue, such as in disputes involving testamentary capacity, undue influence, fraudulent inducement, or alleged drafting errors. Washington does not recognise a general testamentary exception that automatically permits disclosure of estate planning communications. As a result, an estate planning attorney may not disclose planning files or communications simply because beneficiaries request them. After death, the authority to waive privilege typically rests with the personal representative, not with beneficiaries.

Waiver and Exceptions

Privilege may be waived through voluntary disclosure to third parties, placing legal advice at issue, or by failing to timely assert the privilege. Inadvertent disclosure may also result in waiver depending on the circumstances. When privilege is waived, it may extend beyond a single communication to related subject matter.

In the trust and estate administration context, courts may apply a fiduciary exception that limits a fiduciary's ability to assert privilege against beneficiaries for communications concerning routine trust administration.

Courts may also permit limited disclosure of planning communications when necessary to determine the decedent's intent. These determinations are highly fact-specific, and Washington courts tend to proceed cautiously to balance confidentiality with fairness.

3. Will Contests and Capacity Issues

3.1 Grounds for Challenging a Will

Washington law recognises several grounds for challenging a will, including lack of testamentary capacity, undue influence, fraud or forgery, improper execution, and revocation. Courts favour enforcing wills, and a high burden rests on the challenger.

Common Grounds and Evidence

Lack of capacity is shown by evidence that the testator did not understand the act, their property, or the natural objects of their bounty. Medical records, the drafting attorney's testimony, and witness observations near the time of execution are commonly relied upon.

Undue influence claims focus on whether the influence overcame the testator's free will. Courts evaluate factors such as confidential relationships, involvement in drafting, and whether the disposition appears unnatural. These claims are often proven through circumstantial evidence.

Fraud, forgery, improper execution, and revocation require specific proof such as misrepresentations, handwriting analysis, witness testimony, or evidence of a later will. Successful challenges require credible, specific evidence rather than speculation.

3.2 Procedure for Will Challenges

A will contest is initiated by filing a petition in the superior court handling the probate. Only an interested person, such as an heir or prior beneficiary, has standing. The petition must state specific legal grounds.

Washington imposes a strict four-month deadline from admission of the will to probate. The petitioner must also properly serve the personal representative and required parties.

Once filed, the dispute proceeds under TEDRA. Discovery may occur, and courts strongly encourage mediation. If unresolved, the court conducts an evidentiary hearing or trial and determines whether the will is valid in whole or in part.

3.3 In Terrorem Clauses

Washington recognises in terrorem or no-contest clauses, subject to an important limitation, which is that such clauses are unenforceable if a beneficiary brings a challenge in good faith and with probable cause after disclosing all material facts to their attorney.

No-contest clauses typically provide that a beneficiary forfeits their interest if they contest the will. Their purpose is to deter meritless litigation and promote orderly administration.

The probable cause exception allows beneficiaries to pursue well-founded challenges without risking forfeiture. Courts assess probable cause based on the facts known at the time of filing and the legal merit of the claims. Reliance on advice of counsel, after full disclosure, may support a finding of probable cause.

3.4 Powers of Attorney

Durable powers of attorney are a primary tool in Washington for addressing capacity issues without court involvement. They allow individuals to appoint an agent to manage financial and legal affairs if incapacity occurs.

To remain effective during incapacity, the document must include durability language. It may be effective immediately or triggered by a defined event, such as a physician's determination. Proper execution requires notarisatation or witnessing.

Durable powers of attorney are commonly used to avoid guardianship, ensure continuity of asset management, and preserve personal decision-making preferences. They may be revoked at any time while the principal has capacity.

4. Family Businesses

4.1 Intrafamily Disputes

Family businesses typically transfer wealth and control through layered entity structures that often include closely held corporations, LLCs, and family limited partnerships. These entities are often held inside one or more irrevocable trusts designed to transfer wealth in a tax-efficient and discounted manner. These arrangements can generate disputes over valuation, governance, and fiduciary duties, particularly following the death or incapacity of the founding generation. Where ownership interests are held in trust or arise by inheritance, certain disputes can be addressed under the framework of TEDRA, whereas conflicts over business management, contracts or control are more commonly resolved through traditional civil litigation.

5. Creditor Claims

5.1 Trusts, Foundations and Similar Entities

Revocable trusts generally do not shield assets from creditors because the settlor retains control and can revoke the trust. Assets are thus included in a settlor's estate at death and available to satisfy creditor claims. Irrevocable trusts with spendthrift provisions may limit creditors' access to trust assets in certain circumstances. However, self-settled spendthrift trusts created for the settlor's own benefit are not shielded from the settlor's creditors. Limited liability companies also provide some protection against creditor's claims, in that creditors are generally limited to obtaining charging orders, which allow them to receive distributions, but prevent them from directly seizing company assets. Each of these structures may be subject to the Uniform Voidable Transactions Act, however. Transfers made with inadequate consideration or with intent to defraud creditors can be voidable regardless of the structure used.

5.2 Matrimonial Claims

A Washington court presiding over a divorce is required to dispose of the divorcing parties' property and liabilities in a manner that is just and equitable, without regard to either party's misconduct. Several nonexclusive factors go into a court's determination with respect to property division, including the dura-

tion of the marriage or domestic partnership, the characterisation of the property as community or separate property, and the economic circumstances of each spouse or domestic partner at the time the division of property is to become effective. Characterisation of property is not determinative with respect to division. For example, a court could award the family home to the party with whom the children will reside the majority of the time, even if such award results in an unequal distribution of the overall community property. Similarly, a court could exercise its discretion to award one spouse's interest in a family business to the other spouse, even if the interest is the first spouse's separate property.

Ability to Reach Family Wealth Structures

In certain circumstances, the "just and equitable" standard creates an opening for one party to try and reach into structures created for the other party's separate benefit, including beneficial interests in family trusts. For example, although family trust assets may be characterised as neither party's property and therefore not subject to division in a divorce proceeding, a divorce court may nonetheless authorise inquiry into the trust's terms and assets as part of the discovery process. A court may award the beneficiary spouse fewer community assets, given that such party receives assets from another source.

A divorcing party may also argue that they contributed to the other party's family business or wealth structure that would otherwise be characterised as separate property and may claim reimbursement for community property contributions.

A divorcing party may also argue substantial commingling has occurred, such that an asset once characterised as separate property becomes community property. This may arise when separate property mixes with community property to such an extent that the remainder can no longer be identified as separate property or community property.

A divorcing party who contends that the other party has concealed assets may seek relief under Washington's Uniform Voidable Transactions Act if they can establish they are a creditor and that the other party has transferred assets with actual intent to

hinder, delay, or defraud, or transfers made without receiving a reasonably equivalent value in exchange and either unreasonably small remaining assets for the business or transaction, or intent or belief that the debtor would incur debts beyond the ability to pay.

Strategies to Guard Against Vulnerabilities

Prenuptial and postnuptial agreements

Washington recognises prenuptial and postnuptial agreements that are substantively fair, in that they provide reasonable provisions for the non-enforcing spouse, and procedurally fair, involving full disclosure, voluntary execution, and the availability of independent counsel. These agreements can be used to define separate property rights in family trusts and entities.

Trusts

Trust property held in a trust created by someone other than the beneficiary is exempt from seizure, providing spendthrift protection. Exceptions exist, however, for child support and spousal support obligations.

Use of entities

Creditors of limited liability company members and limited partnership interests are limited to charging orders as their exclusive remedy. In divorce, the non-member party may receive rights to distributions but will have no right to control the entity or to the underlying assets.

5.3 Defence Against Creditor Claims

Washington has a comprehensive statutory scheme for defending against creditor claims in probate proceedings.

Barring Untimely Claims

Personal representatives must give potential creditors notice of the procedure for filing and serving claims. Creditors who receive actual notice must present claims within the later of 30 days after the personal representative's service or mailing of notice to the creditor, or four months after the date of first publication. For creditors who do not receive actual notice, the time to submit a claim depends on if they are a reasonably ascertainable creditor. A creditor who is reasonably ascertainable may file and serve a claim up to twenty-four months from the decedent's date of death, even if publication has occurred. Non-ascer-

tainable creditors must present claims within four months after the first publication of notice, or within twenty-four months if no notice of publication was made. No claim may be presented after twenty-four months of a decedent's death.

A personal representative may bar untimely claims and may coordinate service of notice in a manner to expedite the period within which a creditor must present a claim. For example, a personal representative may serve a known creditor with actual notice to limit the response time to 30 days from the date of actual notice. A personal representative may petition the court to determine they have taken necessary steps to find reasonably ascertainable creditors, and then provide actual notice to those creditors, to limit the ability of unknown creditors to later argue they were known creditors. Personal representatives who conduct a reasonable review of a decedent's records are presumed to have exercised reasonable diligence in identifying creditors, creating a rebuttable presumption that an undiscovered creditor is not reasonably ascertainable, thereby limiting the claim filing period for any undiscovered creditor to four months from the date of publication of notice to creditors.

Rejecting Claims and Forcing the Creditor to File a Lawsuit

Personal representatives are authorised to reject creditor claims in whole or in part. While personal representatives must act in good faith, they have authority to reject claims with formal defects, claims with legal defects, and claims that lack supporting documentation, among other bases. When a personal representative rejects a claim, the creditor must bring a lawsuit against the personal representative within thirty days, or the claim is forever barred.

Compromising Claims

Personal representatives may compromise creditor claims if it appears to the personal representative that the compromise is in the best interests of the estate. For example, it may be beneficial for a personal representative to pay all or part of a claim if litigating the claim would exceed the value of the claim.

6. Fiduciary Duties

6.1 Trustees and Beneficiaries

Beneficiaries can bring claims against fiduciaries when the fiduciary may have breached their fiduciary duties or for an accounting. A beneficiary of a trust can bring a claim against a trustee in instances of breach of trust, breach of fiduciary duties, and to exercise the beneficiary's rights, such as for an accounting. Actions against a trustee and against other fiduciaries, such as against a personal representative, are governed by the procedures of Washington's Trust and Estate Dispute Resolution Act.

6.2 Trustees and Third Parties

In order for third parties to bring claims against a fiduciary, the third party must have legal standing to do so. Third parties with a legally recognised claim may include creditors or those who have contracted with a trustee who may have exceeded their authority and caused harm. There may also be instances where a third party may be specifically authorised to bring claims against a fiduciary, such as when the court appoints a guardian ad litem or special agent to pursue such claims on behalf of an interested party.

6.3 Fiduciary Liability

Courts may pierce the veil when a settlor, trustee, or beneficiary uses the trust or other structure for personal gain and does not abide by the entity's structure. In Washington, courts emphasise intentional misconduct when considering piercing the veil – whether the trust or other entity was used to evade a legal duty or disregarding the entity is necessary to prevent unjust harm. Trusts or other entities can protect fiduciaries from liabilities through a grant of discretion, safe harbour provisions, and explicitly excusing the fiduciary of certain reporting or disclosure requirements. Fiduciaries may also be protected from liability when acting on professional advice received.

7. Forced Heirship

7.1 Forced Heirship Rules

Washington does not have forced heirship laws requiring that heirs receive a portion of a decedent's estate. Rather, a testator generally has the freedom to disin-

herit heirs. An heir is someone who would be entitled to a decedent's real and personal property if a decedent dies without a will. Heirs may include surviving spouses, surviving domestic partners, children, parents, siblings, and more remote relations. Despite a decedent's right to disinherit heirs, Washington law provides surviving spouses, domestic partners, and children with rights to assets and support under certain circumstances.

Omitted Spouse

RCW 11.12.095, the omitted spouse statute, prevents the unintentional disinheritance of a surviving spouse. The statute entitles a spouse who married a decedent after a will was prepared to inherit their intestate share of the decedent's estate unless the omission was intentional. If a court determines the omission was intentional, it may award the surviving spouse a smaller intestate share, or no share.

Omitted Child

RCW 11.12.091, the omitted child statute, prevents the unintentional disinheritance of a child. The statute entitles a child of the decedent who is born or adopted by the decedent after the will's execution, and who survives the decedent, to inherit their intestate share of the decedent's estate unless the omission was intentional. If a court determines the omission was intentional, it may award the surviving spouse a smaller intestate share, or no share.

Family Support Awards

A decedent's surviving spouse, surviving registered domestic partner, or dependent children, or all of them, may petition for an award from the decedent's separate property and from the community property of the decedent that is exempt from attachment, execution, and forced sale. Washington law imposes strict timing for petitioning for such award. The basic award is calculated at no less than USD125,000, multiplied by an inflation factor, and may be modified upward or downward based on equitable factors.

Community Property Laws

Washington is a community property state. With exceptions for gifts and inheritances, Washington law presumes that property acquired during a marriage or a registered domestic partnership is com-

munity property. Regardless of a decedent's intent in a will to disinherit a surviving spouse or domestic partner, Washington prohibits a testator from devising or bequeathing by will more than one-half of the community property.

7.2 Succession Disputes

A surviving spouse, domestic partner, child, or other heir may petition under TEDRA for the determination of their rights as an omitted spouse, or their rights as an omitted child, to enforce community property rights, or for the determination of a family support award.

7.3 Relocation of Assets and Other Means to Avoid Forced Heirship

Washington does not have forced heirship, so this is not applicable.

8. Regulatory Matters and Criminal Enforcement

8.1 Tax Authorities and Civil Regulators

In Washington, private wealth is not subject to comprehensive regulation other than through federal and state tax laws. Although Washington is one of the few states with no state income tax, it imposes many other taxes on Washington individuals and businesses, including state estate tax, sales tax, B&O tax, use tax, and excise tax. In 2021, Washington's excise tax was expanded to include a 7% capital gains tax on the sale or exchange of certain long-term capital gains. Although this tax only applies to individuals, it includes situations where an individual has an ownership interest in a pass-through or disregarded entity that sells or exchanges long-term capital assets. With respect to estate tax, Washington taxes estates of individuals where the deceased's estate exceeds USD3 million (indexed for inflation) at graduated rates between 10% and 35%. Unlike the federal estate and gift tax regime, Washington does not tax gifts. But like the federal estate tax, it grants a marital deduction for death-related transfers between spouses and certain trusts created for the primary benefit of a spouse.

Civil enforcement of federal taxes is handled by the Internal Revenue Service, while Washington's Depart-

ment of Revenue oversees enforcement at the state level. Enforcement typically occurs through audits, assessments, and civil penalties, with criminal referral reserved for egregious cases such as tax evasion. Accountants, lawyers, and other "gatekeepers" are not routine enforcement targets, but may face civil exposure for facilitating improper transactions.

8.2 Criminal Enforcement

Criminal enforcement relating to private wealth is generally reserved for serious misconduct, such as fraud, theft, and elder financial abuse. The FBI investigates matters that involve interstate transfers or violations of federal statutes, while local police pursue referrals from Adult Protective Services. Prosecution of professional "gatekeepers" – such as lawyers, accountants, trustees, and other fiduciaries – is uncommon, and typically requires evidence of knowing participation in criminal conduct, rather than mere negligence or poor professional judgment.

8.3 Private Criminal Prosecution

In Washington, as in the rest of the US, criminal actions may be investigated and prosecuted only by authorised government entities. Private parties nevertheless play an important role by reporting suspected misconduct to law enforcement or Adult Protective Services, and by cooperating in investigations. In practice, alleged wrongdoing more commonly gives rise to parallel civil proceedings, including actions brought under TEDRA or the Vulnerable Adult Protection Act.

8.4 Cross-Jurisdictional Disputes

Washington courts regularly handle wealth disputes involving multiple jurisdictions. For example, there may be federal tax implications involving a Washington-situated trust, or such trust may own out-of-state real property governed by the law of the other state. Within the framework of TEDRA, matters are addressed through situs, jurisdiction, governing-law provisions, choice-of-law principles and coordination with parallel proceedings in other state or federal courts.

9. Undoing Mistakes

9.1 Reformation Proceedings

Washington permits reformation of wills and trusts when the document fails to reflect the creator's intent due to a mistake of fact or law. Reformation requires clear, cogent, and convincing evidence.

Circumstances and Process

Reformation is most often sought to correct drafting errors, including scrivener's errors or mistaken expressions of intent. Common examples include misidentified beneficiaries, omitted provisions, or language inconsistent with drafting instructions.

The process typically begins with a petition filed by an interested party, such as a beneficiary or trustee. Extrinsic evidence, including drafting files and correspondence, is presented to establish intent and mistake. If the standard is met, the court may reform the document to reflect the proven intent. Reformation may also be accomplished through a TEDRA nonjudicial settlement agreement if all parties consent.

9.2 Fiduciary Discretion

Washington does not explicitly follow the Hastings-Bass rule but provides for equivalent relief through statutory trust reformation, decanting procedures, and judicial review of trustee's exercises of discretion.

Trustees may decant a trust into a new trust with modified terms when modifications are in the best interest of the beneficiaries. However, decanting may not be permitted when it would defeat the settlor's tax-related purposes or is expressly restricted by the trust document.

Further, under Washington's TEDRA framework, courts have broad equitable powers to intervene in trust administration and in other fiduciary contexts. Courts may judicially reform or modify a trust to reflect the settlor's actual intent when proven with clear and convincing evidence and when the trust document was affected by a mistake of fact or law.

Beneficiaries may also pursue court intervention and relief when a trustee or other fiduciary may have breached their fiduciary duties in the exercise of their discretion. Courts have equitable authority to provide relief in such instances.

10. Other Considerations

10.1 Cultural Sensitivity

Washington's technology sector is a large part of the state's economy, which has led to the creation of substantial wealth through start-ups and other technology avenues. Substantial wealth is often tied to a desire for privacy. Washington's estate planning tools afford wealthy persons with tools to achieve privacy through trusts and other means.

10.2 Disputes Trends

Trends shaping wealth disputes in Washington reflect both demographic and technological change. An ageing population, coupled with the rapid expansion of digital estate-planning tools, such as the use of "e-signatures," online beneficiary designation forms, or even wills created wholly by AI, has fuelled the use of "do-it-yourself" estate-planning documents prepared without legal advice. These documents often fail to reflect intent or fail in execution requirements. These self-prepared documents also make fraud, forgery, and undue influence harder to detect and prove.

Meanwhile, the influence of TEDRA on wealth disputes cannot be overstated. Now in its third decade, TEDRA employs broad equitable remedies and discretionary fee-shifting provisions that make beneficiary claims against agents, personal representatives, and trustees economically viable, particularly for disputes involving conflicts of interest, self-dealing, and accountings. Finally, Washington's modernised guardianship and conservatorship statutes, together with the Vulnerable Adult Protection Act, have further expanded the ability to litigate these issues during a principal's lifetime, rather than only after death.

Trends and Developments

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Stokes Lawrence, PS has offices in Seattle and Yakima, Washington, and represents businesses including closely held entities and public corporations, as well as the families and individuals behind them. The firm's experienced attorneys combine deep legal knowledge with a personalised approach to meet each client's unique needs. Stokes Lawrence is home to the pre-eminent Trust & Estate Litigation team in the Pacific Northwest, handling a wide range

of matters including will contests, fiduciary disputes, guardianship and conservatorship matters, and high-stakes trust and estate litigation. As a majority women-owned firm, Stokes Lawrence is certified as a Women's Business Enterprise by the Women Business Enterprise National Council. The firm is a proud member of the National Association of Minority and Women-Owned Law Firms (NAMWOLF) and Lawyers Associated Worldwide (LAW).

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USA – WASHINGTON TRENDS AND DEVELOPMENTS

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Committed Intimate Relationship Gifting Challenges

Recent years have seen a growing number of cases involving a person challenging the validity of gifts made by their spouse to third parties. Can similar challenges be made by significant others who are not married but in committed intimate relationships? The issue has not been addressed by Washington courts, but is likely to be litigated.

Washington is a community property state, so, with some exceptions (such as assets received by one spouse by specific gift or inheritance), property acquired during marriage is considered community property, which is owned equally by both spouses. RCW 26.16.030 (2) provides that neither spouse shall give community property to a third person without the express or implied consent of the other spouse. Where one spouse unilaterally makes a gift of community property, the other spouse may prevent the transaction unless they sanctioned, ratified, or are otherwise estopped to repudiate the transaction. Affirmance of the gift can be inferred from a failure to repudiate it. Once the objecting spouse has sufficient information to be reasonably informed of the transaction, they have a duty to elect to either accept or repudiate it. If consideration has been given in exchange for the transfer, it is presumed that the marital community received the consideration and that the non-participating spouse consented to the transaction. In short, a married person has the right to avoid a gift of community property that their spouse made without consent.

Can this right be extended outside the context of a legal marriage? While Washington law does not recognise common-law marriages, our courts have held that, in the absence of a marriage or registered domestic partnership, a couple may form a committed intimate relationship (CIR), which is a marriage-like relationship between certain unmarried cohabitants. A CIR is defined as a “stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist”. A court’s inquiry into the existence of a CIR is a fact-intensive inquiry that will depend on several factors on a case-by-case basis. Relevant factors include, but are not limited to, continuous cohabitation, duration

of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and the intent of the parties. Rather than rigid guidelines, the factors are a non-exclusive list of evidence for the court to consider, and none of the factors is more important than the others or determinative on its own.

Property acquired during the existence of a CIR is not technically subject to community property rules, so it is not presumptively owned by both partners to the CIR. However, such property is subject to an equitable division when the CIR ends, either by divorce or death of one of the parties. Washington courts have explained that marital and community property rules may be applied to CIRs by analogy in appropriate cases. Property that is subject to equitable distribution between the parties upon the termination of a CIR is that which would have been community property had the parties been married. The separate property of each partner is not subject to division. The division of CIR property is handled similarly to community property in marital dissolution proceedings, but aims for a fair and equitable outcome, not necessarily a 50/50 split. The assets, sometimes referred to as “community-like property” are subject to equitable distribution by the court and, as such, can be awarded to the surviving partner regardless of titling, and, even in some instances, despite the wishes stated in the deceased partner’s will.

Whether courts will recognise the right of a person to avoid gifts made by their partner without consent in the CIR context remains to be seen. In an appropriate case, it seems likely that community property principles would be applied by analogy, allowing gifts of property acquired during a CIR to be undone if the challenging partner did not consent or ratify the gift. We would anticipate such cases to include evidence that the property was “community-like” in that it was acquired during the term of the relationship, was held jointly or in a commingled account, and was not traceable to an inheritance or asset acquired prior to the relationship. In other words, that the asset or property gifted to the third party was one that a court would have awarded, at least in part, to the objecting partner had the couple still owned it at the end of the CIR. We think a court would be less likely to allow an objecting partner in a CIR to repudiate a gift made by the other

partner in a situation where there was no joint titling or commingling, where the asset cannot be confirmed to have been acquired during the relationship, or if an objection was not timely made.

The “Deadman’s Statute” in Washington

When a dispute involves a person who has died, courts must decide what testimony is fair to consider. Washington addresses this problem by limiting self-serving testimony about conversations or transactions with the decedent that the decedent can no longer confirm or deny. This concept is commonly referred to as the “Deadman’s Statute” and is codified in RCW 5.60.030. The statute aims to reduce the risk of unverifiable claims and to keep litigation premised on reliable, admissible evidence rather than one-sided narratives.

Why this rule exists

Death silences one side of a story. Washington tries to balance fairness by restricting testimony from people with a direct stake in the outcome when they claim conversations or transactions with the decedent occurred which could benefit them. The idea is simple: if the decedent cannot confirm or deny something, courts should be cautious about letting self-serving accounts drive the result. Washington is unique in its approach because most other states have abolished a robust version of the Deadman’s Statute and, instead, rely on traditional hearsay rules to control reliability of testimony.

The basics

A party in interest cannot testify on their own behalf about:

- any transaction they had with the decedent, or
- any statement the decedent made to them or in their presence.

Courts often use a practical test: if the decedent were alive, could they contradict this testimony? If yes, the testimony is the kind the statute is designed to screen out.

Importantly, this is not a blanket ban on all evidence touching the decedent, as:

- documents often come in and “speak for themselves” (eg, contracts, account forms, wills, financial documents, etc);
- disinterested witnesses may testify, subject to the usual evidence rules; and
- hearsay rules still apply independently; even if the Deadman’s Statute doesn’t bar something, hearsay might.

Who is a “party in interest”?

A party in interest stands to gain or lose directly from the judgment. A common example of a party in interest is a beneficiary in a will contest or someone asserting a property right through the decedent. A party in interest has a direct, immediate, legal stake, not just emotional involvement. Relationships alone do not make someone “interested”, and being a relative may affect weight, not admissibility. People without a direct claim to estate assets are generally outside the limits of the statute.

A common wrinkle: in will contests, a personal representative who is also a beneficiary may be “interested,” which can restrict their testimony about personal conversations with the decedent even though they have a duty to defend the will.

What counts as a “transaction”?

A “transaction” is any dealing between the decedent and the interested party that could benefit or harm either side and has legal consequences in the dispute.

Typical examples:

- contract formation or modification;
- property transfers or instructions;
- beneficiary changes and account designations; and
- will execution and related directions.

Three practical boundaries:

- acts of the interested party alone can be admissible if those acts do not reveal the decedent’s statements or conduct; you can say what you did, but you cannot use this as a tool to smuggle in what the decedent said or meant;

- interested parties generally cannot interpret or explain what the decedent's documents meant; that effectively testifies to the decedent's understanding or intent; and
- "negative" testimony – statements framed as "what did not happen" in a transaction – can still be barred if it implicates the decedent's side of the dealing.

Waiver: how the door can open

The protections can be waived, sometimes intentionally and sometimes by litigation choices. Waiver typically occurs when the protected party: (i) fails to object to the testimony; (ii) cross-examines an interested witness beyond the scope of their direct testimony and into barred topics, or (iii) affirmatively offers testimony about the transaction or communication with the decedent.

Once the protected party introduces evidence about a transaction or conversation, the interested party is usually entitled to rebut it even with testimony that would otherwise be excluded. This prevents the statute from becoming a one-way sword.

Waiver is generally topic-specific. Opening the door on one transaction does not automatically open it on unrelated dealings. Also, negative testimony ("this never happened") can trigger waiver if it effectively puts the transaction at issue and invites rebuttal.

Pre-trial steps, such as filing an affidavit in support of a routine motion, taking depositions, or exchanging interrogatories do not automatically waive the statute. Waiver becomes more likely when these materials are introduced into evidence at trial or used substantively on summary judgment.

Conclusion

Washington's Deadman's Statute is a targeted limit on self-serving testimony about transactions or statements with someone who can no longer respond. It does not replace the hearsay rules; it works alongside them. Knowing who is "interested," what counts as a "transaction," and how waiver happens will shape strategy, discovery, and trial and often determines which evidence reaches the decision-maker.

Who Must Prove What? Understanding Burden Shifting and Evidence Categories in Undue Influence Litigation

Undue influence can arise in various types of cases, and, depending on the case, while the standard of proof is the same, burden shifting and the categories of necessary evidence differ. This article explores these concepts for: (i) contesting a will; (ii) financial exploitation claims; (iii) invalidating an inter vivos gift; and (iv) contract rescission.

The standard of proof for establishing undue influence across all four case types is clear, cogent, and convincing evidence, the highest civil standard. Courts often borrow reasoning between these case types (eg, financial exploitation case borrowing undue influence principles from a will contest), so there are close similarities in the analytical framework for evaluating the claims. However, "who must prove what" varies between cases concerning will contests, financial exploitation, inter vivos gifts, and contract invalidity.

Undue influence burdens in will contests

A will that is the product of undue influence can be deemed invalid under Washington law, if the petitioner proves the testator was unduly influenced by clear, cogent, and convincing evidence. *Dean v Jordan* is the foundational Washington case addressing undue influence in will contests. A petitioner must first provide evidence establishing the Dean factors, which concern categories of suspicious facts and circumstances that, if present, call the validity of the will into question. These factors include: (i) a fiduciary or confidential relationship between the testator and beneficiary; (ii) the beneficiary's participation in procuring the will; (iii) the naturalness of the inheritance; (iv) the age and condition of the testator; (v) the circumstances of the testator and beneficiary's relationship; and (vi) the beneficiary's opportunity to exert undue influence. The weight of each Dean factor varies according to the particulars of the case, and establishing any combination of factors may raise a presumption of undue influence. Once the presumption arises, the burden of production shifts to the respondent who must rebut the presumption. The absence of adequate rebuttal evidence may be sufficient to overthrow the will, but the contestant's evidence must still satisfy the clear, cogent, and convincing standard.

Undue influence burdens in financial exploitation cases

Financially exploiting a vulnerable adult can result in complete disinheritance (RCW 11.84.020; RCW 11.84.030). Undue influence can be grounds for financial exploitation, if proven by clear, cogent, and convincing evidence. Like in will contests, there is a burden-shifting component – a presumption of undue influence arises, and the burden of production shifts to the respondent if the petitioner establishes: (i) a confidential or fiduciary relationship that relates to the asset that is the subject of the undue influence claim; (ii) that the respondent dictated the terms of the transaction; and (iii) that the undue influence resulted in injury to the vulnerable adult (one Court of Appeals opinion states that the injury must occur during the vulnerable adult's lifetime, as opposed to harm suffered only by the estate). These are requirements, not factors. Unlike in will contests, the court does not have leeway to weigh a combination of these requirements to reach the presumption. Also, unlike in will contests, financial exploitation is a product of statute (RCW Ch. 74.34), not case law, and proving undue influence is only part of the claim. However, because the statute does not define the term “undue influence,” courts look to the line of undue influence case law, including the Dean v Jordan factors from will contests.

Burdens for invalidating an inter vivos gift due to undue influence

An inter vivos gift is a gift made by a donor to a recipient during the donor's lifetime. The party seeking to set aside an inter vivos gift must prove the gift is invalid. However, if the donor and recipient are in a confidential or fiduciary relationship, the burden shifts to the recipient to prove by clear, cogent, and convincing evidence that the gift was intended, and not the result of undue influence. To do this, the recipient must present strong evidence that the gift was made freely, voluntarily, and with a full understanding of the facts.

Proving a negative (ie, that the gift was not the result of undue influence) is challenging, to say the least. The law presumes that people are generally less likely to give away property while they are alive, whereas undue influence in will contests concerns property that cannot still be used by the decedent.

Burdens for contract rescission due to undue influence

To invalidate a contract based on undue influence, the petitioner must prove with clear, cogent, and convincing evidence that one of the contracting parties was unduly influenced by the other. If there is a confidential relationship between the parties – such as with will contests, financial exploitation and inter vivos gifts – there is a rebuttable presumption of undue influence. Even when the presumption applies, the petitioner must show that the relationship led to some harm or loss connected to the contract.

Conclusion

The standard of proof for undue influence – clear, cogent, and convincing – is shared between will contests, financial exploitation claims, invalidating inter vivos gifts, and contract rescission. The analysis for each case category evaluates the same core question: Was the act or transaction the product of free will? Yet key aspects of the analysis differ, particularly burden shifting and the categories of necessary evidence.

Tortious Interference with Expected Gift or Inheritance in Washington

Imagine learning that your grandmother was planning to give you a gift or leave you an inheritance, but then someone prevented her from doing so. Maybe that someone pressured her into leaving your inheritance to them instead. Maybe they hid your grandmother's will because they stood to inherit more without it. Or maybe they convinced her to invest your gift in a fraudulent business scheme, telling her that it would make your gift bigger over time. No matter whether that someone uses fraud, duress, or another unlawful tactic to interfere with your expected gift or inheritance, they should be held liable.

That is the idea behind a cause of action called tortious interference with expected gift or inheritance, and that cause of action could emerge as a new tool for Washington heirs and beneficiaries to protect their rights and their testators' intentions.

Washington has embraced the rationale supporting tortious interference with expected gift or inheritance for over a century. In 1910, the Washington Supreme Court first recognised a close cousin of that claim: tor-

tious interference with business expectation. Reasoning that American common law has always protected a person's property from the wrongful acts of another, our Supreme Court determined that it is "almost the universal doctrine of the courts of the country" that "interference with the affairs of others" – "especially if the motive actuating such interference is to work injury to others" – gives rise to liability.

Put another way: If you intentionally prevent someone from receiving property that is rightly theirs, the law requires you to reimburse them for that loss. Even though this principle originally arose in the context of employment and economic disputes, states across the country have begun applying it in the context of gifts and inheritances. In fact, the elements of tortious interference with business expectancy are almost identical to the elements of tortious interference with expected gift or inheritance.

Tortious interference with business expectancy requires proof that:

- the plaintiff had a valid contractual relationship or business expectancy;
- the defendant had knowledge of that relationship or expectancy;
- the defendant intentionally interred, inducing or causing a breach or termination of the relationship or expectancy;
- the defendant interfered for an improper purpose or used an improper means; and
- damage to the plaintiff resulting from the defendant's interference.

Tortious interference with expected gift or inheritance requires proof that:

- the plaintiff had an expectation of receiving a gift or inheritance from a third party;
- the defendant intentionally interfered, preventing that expected gift or inheritance;
- the defendant interfered through tortious means, such as fraud, duress, or undue influence;
- reasonable certainty that the expected gift or inheritance would have been realised but for the defendant's interference; and

- damage to the plaintiff resulting from the defendant's interference.

Almost half of all states now recognise the claim of tortious interference with expected gift or inheritance as a natural extension of the common law reasoning behind tortious interference with business expectancy. Washington practitioners should be aware that the state could be the next to embrace this claim.

Washington courts are open to recognising tortious interference with expected gift or inheritance in the right case.

While the Washington Supreme Court has not yet reviewed any case involving a claim of tortious interference with expected gift or inheritance, its Court of Appeals has encountered the claim several times. In each case, the Court of Appeals had declined to recognise the tort – not because it is rejecting the tort or because the tort is inconsistent with other aspects of Washington law, but because no case has yet presented a factual scenario consistent with all five elements of the claim.

Even in declining to recognise the tort, the Court of Appeals has recognised that it has been an important development in other states: "No Washington case has adopted the tort of interference with expected inheritance, although other jurisdictions have recognised this tort or extended the tort of interference with a business expectancy to include inheritance expectancy". The Court of Appeals approvingly cited the Restatement (Second) of Torts, which tracks important legal developments across the country – and has recognised tortious interference with expected gift or inheritance since at least 1965. And in its most recent published decision on the issue, the Court of Appeals made clear that it was declining to recognise tortious interference with expected gift or inheritance because "the trial court did not find facts necessary to support the theory".

Together, these comments suggest that the Court of Appeals could recognise the claim of tortious interference with expected inheritance in a case that presents the facts necessary to satisfy each element.

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Limitations on tortious interference with expected gift or inheritance

The Court of Appeals decisions declining to recognise tortious interference with expected gift or inheritance provide guidance as to three important limitations on any such claim.

First, the Court of Appeals has made clear that the tort is not a workaround for Washington's four-month statute of limitations for will contests. Therefore, if the claim of tortious interference with expected gift or inheritance involves challenging the terms of a will, it must be brought within the four-month statute of limitations.

Second, the Court of Appeals has recognised that the tort requires an intentional tortious act. This means that interference through negligence alone is not sufficient to state a claim for tortious interference with an expected gift or inheritance.

Finally, the Court of Appeals has recognised that the tort requires independent tortious conduct, meaning that the interference must have happened through improper means or with an improper purpose. Thus, a person cannot be held liable for interfering with an expected gift or inheritance through legal means.

Practitioners should be aware of these pitfalls, regardless of whether they are making or defending a claim for tortious interference with an expected gift or inheritance. As parties continue asserting the tort and Washington courts continue assessing it, litigators have the opportunity to help shape the direction of Washington law.

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