

# Probate & Fiduciary Litigation Newsletter - February 2022

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*This newsletter is intended to keep readers informed about developments in probate and fiduciary litigation in Massachusetts and New York. Our lawyers are at the forefront of this area of the law, shaping how it is handled in the Probate and Family Court. Goulston & Storrs is the go-to firm in the Northeast for litigation involving [Probate and Fiduciary](#) matters.*

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## **Intentional Interference and Unjust Enrichment Claims in Connection with a Trust Not Barred by the One-Year Limitation for "Trust Contests" in Massachusetts**

*Sacks v. Dissinger*, 178 N.E.3d 388 (Mass. 2021)

Are claims for intentional interference with a gift expectancy, and unjust enrichment of those who benefitted from a trust's modification, barred by Massachusetts' one-year limitations period for claims to "contest the validity of a trust"? In *Sacks v. Dissinger*, 2021 WL 6129759 (Sup. Jud. Ct. December 29, 2021), the Supreme Judicial Court of Massachusetts answered this important question in the negative, and allowed the claims to proceed.

Aaron Sacks created the trust in 2011. Like many trusts, it provided that, upon the death of the second-to-die of Aaron and his wife, Sheila, the trust's assets would go to their children (of which there were five); and if any of the children predeceased Aaron and Sheila that child's share would go to that child's heirs. Unfortunately, one of their children, Jeffrey, did predecease Aaron and Sheila, in 2012, under circumstances that generated family acrimony. Based on the recommendation of his doctors and with the support of his son, Matthew, and two of his siblings, Jeffrey declined any further treatment of the brain tumor that caused his death. Sheila considered Matthew and the two siblings complicit in Jeffrey's "murder," and was encouraged in this belief by another of Jeffrey's siblings, Nancy. Sheila and Nancy persuaded Aaron to modify the trust to exclude Jeffrey's heirs, so that all the trust's assets would go to the four remaining siblings. When Sheila died in July 2019, Jeffrey's heirs (Matthew and Rebecca) learned that they had been excluded from the trust. They brought suit in November 2019 for (i) rescission of the 2012 amendment, (ii) against Sheila's estate and Nancy for intentional interference with advantageous relations, and (iii) against all four of Jeffrey's siblings for unjust enrichment. As to all these claims, they alleged Sheila and Nancy had exerted undue influence over Aaron.

The defendants moved to dismiss on the ground that all three claims were time-barred under § 604 of Massachusetts' Uniform Trust Code ("MUTC"), which states in relevant part: "A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within... [one] year after the settlor's death." Since Aaron died in 2012, there was no question that more than a year had elapsed. In response, Matthew and Rebecca voluntarily dismissed the rescission count, but pursued the others. A Superior Court judge agreed with defendants and dismissed the intentional interference and unjust enrichment claims as well.

The Supreme Judicial Court reversed, finding that the intentional interference and unjust enrichment claims were not claims "to contest the validity of a trust." The court viewed a "trust contest" as "an action where the underlying facts are assessed for their effect on all or part of a trust (e.g., invalidity)," whereas "an action where the underlying facts are assessed for their effect on a person (e.g., harm)" is not a trust contest. The court concluded "[t]he ultimate object of a [trust] contest is a determination of a trust's validity, not the personal liability or even culpability of the settlors, beneficiaries, or trustees." The court pointed to commentary on MUTC § 604 supporting this conclusion, and found both claims timely under Massachusetts' three-year limitations period for tort claims.

**Takeaway:** In advising potential plaintiffs or defendants in trust contests, care should be taken to distinguish between claims "to contest the validity of a trust" and other forms of claims against settlors, beneficiaries or trustees, including tort claims, as the latter are likely to be subject to a very different limitations period than the former.

## **Trustee's Submission of Change of Beneficiary Form After Decedent's Death Valid to Change the Beneficiaries of Decedent's IRA to the Trust**

Werther v. Werther, 199 A.D.3d 546 (1st Dep't November 18, 2021)

Where a power of attorney held by a trustee authorizing the change of an IRA's beneficiaries expires upon the decedent's death, may the trustee still submit the change of beneficiary form to a financial institution so as to change the beneficiaries of the IRA? In *Werther v. Werther*, 199 A.D.3d 546 (1<sup>st</sup> Dep't November 18, 2021), New York's Appellate Division answered that question in the affirmative and granted summary judgment to the trustee.

Decedent father held an IRA account at Morgan Stanley. The initial beneficiaries were his three children in equal shares. In 2015, decedent gave a power of attorney (POA) to one child, Ellen, giving her authority over the IRA account, including to change the beneficiaries. In 2017, decedent established a trust and named Ellen as trustee. At the same time, under authority of the POA, Ellen filled out and signed the Morgan Stanley "IRA Designation of Beneficiary" form, changing the beneficiary to the trust. The trust beneficiaries included decedent's former housekeeper and his two daughters, and while it made no provision for his son, it included his four grandchildren, including his son's two children. Decedent died on October 18, 2018, and on November 1, 2018, Ellen sent the IRA Designation of Beneficiary form to Morgan Stanley. A dispute arose among the children as

to the change of beneficiaries, and Morgan Stanley liquidated the IRA and put the funds into escrow.

Ellen's two siblings sued Ellen and Morgan Stanley on the theory that the operative beneficiary designation for the IRA was the one on file with Morgan Stanley at the time of their father's death. The trial court denied both sides' summary motions, and the siblings appealed. The Appellate Division ruled for Ellen and the trust. First, the court noted that, "where IRA proceeds have been deposited into escrow, New York law does not require strict compliance with bank rules for validly designating IRA beneficiaries" but just "substantial compliance." That was satisfied because Morgan Stanley's IRA account agreement allowed submission of a change of beneficiary form "at any time." As to the argument that Ellen's authority ended upon the father's death, the court acknowledged that the POA expired upon death, but noted that Ellen "signed the form designating the trust as the IRA's beneficiary during the decedent's lifetime, while she had the authority to do so under the POA. The designation of beneficiaries is separate and distinct from tendering the form for changing beneficiaries."

**Takeaway:** While *Werther* provides some comfort from the trustee viewpoint as to the need to submit change of beneficiary forms before death, the litigation might have been avoided entirely if the form had been submitted promptly after it was executed.

## Appeals Court Clarifies "Qualified Beneficiary" But Leaves Procedural Question Open in Trust Challenges

*In the Matter of the Colecchia Family Irrevocable Trust*, 100 Mass. App. Ct. 504 --- N.E.3d --- (2021)

Who is a "qualified beneficiary" in Massachusetts, and what is the proper procedural means of responding to a trust petition? The Massachusetts Appeals Court recently clarified the first question but left the second without a clear answer in a case entitled *In the Matter of the Colecchia Family Irrevocable Trust*, 100 Mass. App. Ct. 504 --- N.E.3d --- (2021). In *Colecchia*, an objectant objected to a general trust petition on various grounds including undue influence, and several substantive and procedural issues were raised.

One issue was "what is the point in time at which a person becomes a 'qualified beneficiary' for purposes of a trustee's duty to inform under M.G.L. c. 203E, § 813." The Appeals Court held that "in order to determine whether a person is a 'qualified beneficiary' for purposes of a trustee's duty to inform under § 813, the phrase 'the date the beneficiary's qualification is determined' found in M.G.L. c. 203E, § 103, means the date, under the terms of the trust instrument, on which an event occurs to trigger a beneficiary's entitlement under the trust." While this holding was not surprising, it was a ruling of first impression clarifying the point.

The Appeals Court also noted that the lower court ruled the undue influence claim required an affidavit before the claim could proceed, and that "it appears" the lower court was relying on a provision of the Massachusetts Uniform Probate Code, citing to M.G.L. c. 190B, § 1.401(e) (which

requires parties objecting to *probate* petitions to file an affidavit of objections). The Appeals Court pointed out that this provision does not appear in the Uniform *Trust* Code (UTC), and declined to read it into the UTC. The practice in Massachusetts has been to respond to general trust petitions by and through an affidavit of objections. If this is no longer required, it is unclear how parties will respond or object to general trust petitions. After *Colecchia* was published, one respondent trustee filed an answer rather than an affidavit of objections. Our understanding is that the probate court is reviewing and analyzing this issue.

**Takeaway:** *Colecchia* has settled the question of when a person becomes a “qualified beneficiary,” but the decision raises procedural questions going forward about how parties or other interested persons should respond to trust petitions.

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