



Fiduciary Litigation

As part of our fiduciary litigation practice, Williams Mullen represents bank trust departments and trust companies, as well as individual executors, administrators and trustees regarding both complex and routine issues arising in the context of a fiduciary relationship. We also advise individuals and fiduciaries in disputes involving business entities such as partnerships, corporations, foundations and charitable organizations. Our practice comprises leading estate planning attorneys, as well as fiduciary law attorneys. Ten Williams Mullen attorneys are fellows in the American College of Trust and Estate Counsel.

A Preventive Approach to Avoiding Fiduciary Liability

Much of our advice to fiduciaries is centered on preventive measures. We counsel our clients on the best practices to avoid liability in connection with fiduciary responsibilities. Furthermore, we advise our clients on the risk management strategies necessary to avoid the time and expense of litigation.

Unfortunately, disputes do sometimes arise between and among beneficiaries and fiduciaries, even with the best of planning. Williams Mullen regularly represents individual and corporate fiduciaries and beneficiaries throughout the Mid-Atlantic and Southeast in matters involving:

Claims Involving Breach of Fiduciary Duty, Malfeasance, or Mismanagement

Throughout our history, corporate fiduciaries and individuals who serve as trustees have relied on our fiduciary litigation experience when faced with claims involving breach of fiduciary duty, malfeasance or mismanagement.

Representative Experience

- Defended money-center bank in the District of Columbia against multi-million dollar claims by beneficiaries of a trust for fiduciary mismanagement and failure to timely sell hundreds of acres of unimproved land in a rural area of Northern Virginia.
- Defended national bank in the District of Columbia against claims of fiduciary liability and mismanagement for excessive payments to the lifetime beneficiary for his health, welfare and maintenance.
- Defended money-center bank in Arlington, Va., against a claim for fiduciary liability in failing to diversify an investment portfolio and making excessive payments to the lifetime beneficiary.
- Defended multi-regional bank in Richmond, Va., against claims by residuary beneficiaries for fiduciary liability in failing to liquidate assets, diversify an investment portfolio, and in making excessive distributions to the lifetime beneficiary.

- Defended money-center bank, as escrow agent, in Virginia and Georgia in class action suit for breach of contract and breach of fiduciary duty brought by disappointed investors claiming losses in excess of \$20 million for the alleged fraudulent business practices and Ponzi scheme of a former bank customer.
- Defended national bank in Arlington, Va., against a \$10 million claim by a major D.C. hospital, as the settlor and residuary beneficiary, for alleged mismanagement of the trust and excessive payments for the medical care of an incapacitated beneficiary.
- Defended money-center bank as co-trustee in Florida suit for removal for breach of fiduciary duty brought by beneficiaries claiming losses in excess of \$8 million.
- Defended bank and bank officers in state and federal litigation against claim that bank breached its fiduciary duties with respect to a title agent trust account maintained at the bank from which funds were embezzled by the president of the account holder.
- Represented several regional banks in state and federal courts in Virginia and D.C. in multi-million dollar lawsuits alleging mismanagement of trust agreements.
- Represented numerous corporate fiduciaries facing beneficiary allegations that trust amendments were void for lack of capacity and undue influence.
- Defended major national investment firm in regard to fiduciary and statutory security claims involving alleged investment mismanagement.
- Represented a Virginia trust company in suit against former president for breach of contract, breach of duty of loyalty, and misappropriation of trade secrets and confidential information.
- Represented various clients in partnership and corporate dissolution/mismanagement/breach of fiduciary duty and fraud claims.
- Represented a large health insurer in several Virginia jurisdictions against corporate plaintiffs that claimed the insurer failed to pass on discounts it negotiated with health care providers in violation of ERISA and a contract.
- Represented national bank in Cy Pres declaratory action that eliminated bank's potential breach of fiduciary duty in excess of hundreds of thousands of dollars.

Disputes Among Estate and Trust Beneficiaries and Other Parties

As experienced estate planning attorneys, we are aware of the role that family dynamics play in resolving will and trust contests. We are sensitive not only to the valuation side of such settlements, but to the emotional element as well. Our fiduciary attorneys work with our clients to reach a resolution quickly and with minimal interruption.

Representative Experience

- Prosecuted suit against individual co-trustees on behalf of a beneficiary to enforce an agreement regarding the distribution of the estate contrary to the terms of the will. Assets at issue were in excess of \$800,000 and included mineral rights and oil and gas leases.
- Defended executrix and beneficiary in suit to remove her for breach of fiduciary duty based on her

failure to fund monetary bequests. Sought court determination of the construction of the language in the will.

- Represented executor in dispute involving valuation of stock held subject to a shareholder agreement.
- Represented beneficiary in North Carolina courts involving dispute related to amendment of Florida situs trust.

Estate and Gift Tax Audits, Appeals and Litigation

Both business and family clients seek the advice of Williams Mullen in tax matters, including estate tax and gift tax audits. Our tax lawyers provide full support from audit to appeal and litigation, if necessary.

Representative Experience

- Defended client in estate tax valuation case involving closely-held business and numerous real estate parcels.
- Represented client in settlement of IRS audit involving deductibility of executor's commission.
- Brought suit on issue involving the use of post-mortem facts to determine the deductibility of claims against a decedent's estate.
- Represented client in numerous estate and gift tax audits and appeals involving valuation issues for closely-held business entities and real estate interests, including valuation discounts.
- Defended client in gift tax audit centered on discounts applied to various sales of LLC interests to intentional defective grantor trusts.
- Defended national bank trustee in a declaratory judgment action involving a charitable testamentary trust.
- Defended executor charged with liability for estate's unpaid taxes.
- Obtained Private Letter Ruling from national office of Internal Revenue Service regarding Reformation of Trust with income, estate, gift and generations-skipping transfer tax implications.
- Represented client in reformation of trust to qualify as eligible Subchapter S shareholder and Private Letter Ruling to obtain inadvertent termination relief of S corporation status.
- Obtained reformation after a decedent's death of a beneficiary designation form under a life insurance policy reflecting the beneficiary as "the estate," to the trustees of an Irrevocable Life Insurance Trust (ILIT).
- Modified a testamentary trust on behalf of contingent remaindermen.
- Defended client in a gift tax audit centered on discounts applied to various sales of LLC interests to intentional defective grantor trusts.
- Defended national bank trustee in a declaratory judgment action involving a charitable testamentary trust.
- Defended national bank in Maryland in suit to remove bank as trustee of trust.

Tax-Exempt and Charitable Organizations and Trusts

In addition to advising clients about the administration of trusts and estates, Williams Mullen's fiduciary attorneys provides guidance regarding the reformation and termination of charitable foundations and other tax-exempt entities.

Representative Experience

- Sought judicial reformation of trust to qualify as a charitable remainder annuity trust.
- Brought suit to terminate charitable trust formed to provide scholarships and transfer of assets to scholarship fund (established with local donor advised fund).
- Participated in the judicial conversion of a "net income trust" to a "total return unitrust."
- Represented ousted board members of charitable foundation in dispute involving control and management of foundation.

Core Administrative and Judicial Proceedings

Although Williams Mullen is known to assert and defend high-stake fiduciary claims, our fiduciary attorneys also handle more routine matters for both individuals and businesses. We regularly represent community, regional and money-center banks on matters such as:

- Substitution of Trustee
- Suits to Impeach Wills
- Suits to Establish a Lost Will
- Suits to Determine Heirs
- Suits for Aid and Direction
- Suits for Accounting
- Construction Suits to Resolve Ambiguities
- Rescission or Reformation Proceedings
- Suits to Terminate Trusts
- Unitrust Conversions and Equitable Adjustments
- Principal and Income Act Allocations

Related News

- [Avoiding Contempt: Responding to Non-Party Subpoenas](#)
- [Reformation or "Things Aren't Always What They Seem To Be"](#)
- [Blocking & Tackling: Strategies to Avoid Fiduciary Litigation](#)
- [Implications of a Real Estate Appraisal in a Down Market](#)

- Recent Estate and Gift Tax Developments
- An End-of-Year Refresher on Trustee Duties and Responsibilities
- Planning to Avoid Suits Based on Lack of Mental Capacity
- Challenging an Estate Plan by Proving Incapacity: Akin to a Search for Buried Treasure?
- Banks Face Billions in Liability Exposure
- Lessons Learned: Recent Cases Involving the Uniform Trust Code
- Williams Mullen Receives Top Rankings in U.S. News ? Best Lawyers ?Best Law Firms?
- Williams Mullen Secures Victory for SunTrust Banks, Inc. from Virginia Supreme Court
- Six Williams Mullen Lawyers Included in Inaugural Issue of "Super Lawyers, Corporate Counsel Edition"
- Williams Mullen Announces Election of New Partners
- Review Your Beneficiary Designations
- 56 Williams Mullen Attorneys Named 2016 Virginia Super Lawyers; 22 Named 2016 Rising Stars
- Williams Mullen Adds Trusts & Estates Attorney M.R. Litman
- Keith Kapp Profiled in Business North Carolina's 2019 Legal Elite Issue
- Elizabeth Scott Profiled in Business North Carolina's 2019 Legal Elite Issue
- 6 Williams Mullen Attorneys Ranked on 2019 Top Lists by Virginia Super Lawyers
- Even the Best Laid Plans Can Go Awry: The ?Breakdown? of Tom Petty?s Estate Plan
- 15 Williams Mullen Attorneys Named "Lawyers of the Year" by Best Lawyers®
- Williams Mullen Welcomes Tax Attorney Kevin Bender
- Williams Mullen Grows Private Client & Fiduciary Services Practice with New Partner

Related Events

- 13th Annual Fiduciary Focus
- 12th Annual Fiduciary Focus
- Unprecedented: Force Majeure and Other Contractual Issues in the COVID-19 Crisis
- Employee Benefits Webinar: Practical Tips for 403(b) Plan Sponsors
- Fiduciary Focus 2018
- 2010 Raleigh Fiduciary Focus
- 2010 Richmond Fiduciary Focus
- 2015 Raleigh Fiduciary Focus
- 2014 Raleigh Fiduciary Focus
- 2009 Raleigh Fiduciary Focus
- 2011 Raleigh Fiduciary Focus
- 2012 Richmond Fiduciary Focus
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- 2014 Richmond Fiduciary Focus
- 2013 Raleigh Fiduciary Focus
- 2013 Richmond Fiduciary Focus
- Williams Mullen Fiduciary Focus 2011
- Williams Mullen Hampton Roads Fiduciary Focus 2011

Related Attorneys

- Farhad Aghdami ? 804.420.6440 ? aghdami@williamsmullen.com
- Daniel J. Durst ? 804.420.6465 ? ddurst@williamsmullen.com
- M. Keith Kapp ? 919.981.4024 ? kkapp@williamsmullen.com
- W. Benjamin Pace ? 804.420.6932 ? wpace@williamsmullen.com
- Walter L. Tippett, Jr. ? 919.981.4037 ? wtippett@williamsmullen.com
- John L. Walker, III ? 804.420.6463 ? jwalker@williamsmullen.com