

PROBATE CORNER

By: David M. Garten, Esq.

ARTICLE: WHO IS AN “INTERESTED PERSON” IN PROBATE?

Have you ever represented a client in a probate dispute? If so, then chances are you had to determine whether one or more parties to the dispute had standing. Only an “interested person” has standing to pursue any available probate remedies. The purpose of this article is to provide concrete examples of how case law and Florida Statutes define an “interested person” in probate and testamentary trust proceedings. Whether this term applies to non-testamentary Trusts is beyond the scope of this article.

I. STATUTORY DEFINITION OF AN “INTERESTED PERSON”:

Sec. 731.201(23), Fla. Stat. defines the term "interested person" as:

[A]ny person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s.733.702(1), the trustee of a trust described in s.733.707(3) is an interested person in the administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

II. PROBATE REMEDIES:

Only an “interested person” has standing. A recent case with an extensive discussion of standing in probate courts is Hayes v. Guardianship of Thompson, 952 So. 2d 498 (Fla. 2006). Any interested person may object to the validity of a will, the qualifications of the personal representative, venue or the jurisdiction of the court from which letters of administration were issued. See §733.212(3), Fla. Stat. Additionally, an interested person may pursue any probate remedy affecting the expenses of the administration and obligations of a decedent's estate. For example, an interested person may object to the personal representative’s petition for discharge, final accounting, compensation, payments to employees, and proof of claim. See Florida Probate Rules 5.355 and 5.401(a) and §733.705(4), Fla. Stat.

III. WHO IS AN INTERESTED PERSON?

The following are examples of how the case law and Florida Statutes define an “interested person” in probate and testamentary trust proceedings:

/ The personal representative of the estate is an interested person. Sec.731.201(23), Fla. Stat.

/ If a trustee is also a personal representative of the estate, the beneficiaries of the trust as defined in §737.303(4)(b), Fla. Stat. are interested persons. Sec.731.201(23), Fla. Stat.

/ An assignee of an intestate heir steps into the shoes of the intestate heir and may appear as a party of interest in a probate proceeding. Morse v. Clark, 890 So. 2d 496 (Fla. 5th DCA 2004).

/ A personal representative under an earlier will is an interested person with standing to contest a later will. Engelberg v. Birnbaum, 580 So. 2d 828 (Fla. 4th DCA 1991). *But see* Onofrio v. Johnston & Sasser, P.A., 782 So. 2d 1019 (Fla. 5th DCA 2001) (the personal representative named in a will not yet admitted to probate, was not an interested person. The personal representative came into existence only when she received letters testamentary).

/ Sec.731.201(23), Fla. Stat. does not require that the person be an heir or represent an heir but only that the person "may reasonably be expected to be affected by the outcome of the particular proceeding involved." Wheeler v. Powers, 972 So. 2d 285 (Fla. 5th DCA 2008).

/ An alternate personal representative under an earlier will was an interested person with standing to contest the later will which was executed six weeks before she was involuntarily hospitalized with late stage Alzheimer's disease. Wheeler v. Powers, 972 So. 2d 285 (Fla. 5th DCA 2008). *See also* Engelberg v. Birnbaum, 580 So. 2d 828 (Fla. 4th DCA) (a personal representative in an earlier will has standing to contest a later will).

/ A personal representative has standing as an interested person to file a motion for appointment of a trustee of a residuary trust for which she was not a trustee because that trust was created under the decedent's will and the funding for that trust must come from a portion of the assets of the estate. Barley v. Barcus, 877 So. 2d 42 (Fla. 5th DCA 2004).

/ A potential class 8 creditor who had filed an independent action is an interested person even though the estate would have no assets to pay any judgment the claimant might obtain in the future. Arzuman v. Estate of Prince Bander Bin Saud Bin, 879 So. 2d 675 (Fla. 4th DCA 2004).

/ The term "interested person" does not include a beneficiary who has received a complete distribution. Until the beneficiary actually receives his devise, he "may reasonably be expected to be affected by the outcome of the particular proceeding involved." To "receive" means that the beneficiary has actually taken possession of the devise under the decedent's will. The fact that the estate has sufficient funds to pay the devise in full is not the equivalent of receipt of the devise by the beneficiary. Cason v. Hammock, 908 So. 2d 512 (Fla. 5th DCA 2005).

/ A contingent beneficiary/contingent remainder beneficiary under a testamentary trust is an interested person. Richardson v. Richardson, 524 So. 2d 1126 (Fla. 5th DCA 1988); Barley v. Barcus, 877 So. 2d 42 (Fla. 5th DCA 2004); In re Estate of Watkins, 572 So. 2d 1014 (Fla. 4th DCA 1991).

IV. WHO IS NOT AN INTERESTED PERSON?

The following are examples of how the case law and Florida Statutes define who is not an “interested person” in probate and testamentary trust proceedings:

/ A beneficiary who takes under the will lacks the necessary adverse interest to contest the will. Sec.731.201(23), Fla. Stat.

/ A petitioner may not be an interested person to contest the validity of a will if previous wills do not include the petitioner as a beneficiary of the estate. It is the burden of the petitioner seeking to revoke the present will to establish that the previous will, which also excludes the petitioner as a beneficiary, is invalid. Wehrheim v. Golden Pond Assisted Living Facility, 905 So. 2d 1002 (Fla. 5th DCA 2005); Newman v. Newman, 766 So. 2d 1091 (Fla. 5th DCA 2000)(A beneficiary who was bequeathed only a dollar is deemed to have been excluded under the will).

/ A personal representative does not have standing to contest the will under which he has been appointed and where he has qualified to serve. In such a case the personal representative immediately disqualifies himself to continue to serve when the suit is filed contesting the will. In re Estate of Lewis, 411 So. 2d 368 (Fla. 4th DCA 1982).

/ A former guardian for the decedent who submitted for probate the decedent’s second will did not have standing to petition to revoke the decedent’s first will. The guardian is merely an interloper because he did not have an interest in the outcome of the estate case. Suntrust Bank v. Nichols, 701 So. 2d 107 (Fla. 5th DCA 1997)

/ A beneficiary of an estate does not have standing to pursue recovery of estate assets. Only the personal representative (or a curator/ad litem) has standing to pursue recovery of estate assets. Traub v. Zlatkiss, 559 So.2d 443 (Fla. 5th DCA 1990); Brake v. Murphy, 687 So.2d 842 (Fla. 3rd DCA 1996).