

Court of Chancery Provides Guidance on Limitations Period for Challenging Joint Revocable Trusts

The Court of Chancery recently issued a decision in *Rumford v. Marini*, 2018-0563-PWG, available [here](#), addressing how long parties have to challenge a joint revocable trust after the co-grantors' deaths.

In the case, a married couple purportedly executed estate-planning documents in April 2014, which included a joint revocable trust. Under the joint trust agreement, the property held in trust would be distributed to their two daughters after the deaths of both parents. The joint trust remained revocable until both grantors died. The wife died in March 2015 and the husband died in January 2017.

One of the co-grantors' daughters filed a complaint in July 2017 (within six months of her father's death and three years after her mother's death) challenging, among other things, the validity of the 2014 joint revocable trust because of her mother's lack of capacity and fabricated signature on the trust agreement.

The defendants sought partial summary judgment, arguing that the daughter's challenge to the joint revocable trust was untimely under Section 3546 of Title 12 of the Delaware Code, which requires a revocable trust to be challenged no later than "[t]wo years after the trustor's death." The defendants argued that any challenge to the trust agreement must have been brought two years after the mother's death, not the father's death, because the challenge was based on the mother's incapacity and fabricated signature.

In the context of a joint revocable trust, the statute is silent regarding which of the co-grantors' deaths begins the two-year limitations period, "nor does it provide for separate consideration or deadlines for claims associated with particular trustors." Because, "[i]n Delaware, the settlor's intent controls," the Court determined that it must "look to the trust's operation consistent with the trustor's intent." The Court held:

It is clear from the language of the Joint Trust that the co-grantors intended that they each have rights to direct trust property and to amend and revoke the Joint Trust throughout their lifetimes, and that those rights continue after the death of the other co-grantor. It is at the death of the second co-grantor that the trust becomes irrevocable. Considering the co-grantors' language and intent, I am persuaded by [the challenger's] argument that the only reasonable interpretation of §3546, under the circumstances, is that the two-

year limitation begins to run at the surviving trustor's, or [husband's, 2017] death.

The Court acknowledged that the “the legislative intent of §3546 was to encourage prompt resolution of disputes,” but explained that it was not “not reasonable to interpret that general intent—without specific statutory language addressing joint trusts—as overriding the co-grantors’ plain intent to maintain the Joint Trust’s flexibility for either co-grantor during both of their lifetimes.” The defendants’ motion was denied and the claim will proceed to trial.

Please contact Thomas Uebler (302-468-5963) or Hayley Lenahan (302-485-1170), counsel for the plaintiff, with any questions about the decision.