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LEGACY LITIGATORS

# Trust & Estate Litigation Roadmap: What to Expect From Demand Letter to Trial

*A Client Resource Guide from Fox Law*

Trust and Estate litigation can feel overwhelming, especially when you're already dealing with family tension, financial stress, or the loss of a loved one. This guide walks you step-by-step through what typically happens in a contested California trust and estate matter, from the first demand letter through a possible trial.

Every case is unique. Few resolve quickly. Most require court intervention. The goal of this roadmap is to give you an overview of an average litigated matter and an approximate idea of how long each step may take.

## 1. Pre-Litigation Investigation & Case Evaluation

**Goal:** Understand the facts, evaluate the law against the facts, and assess whether the case is worth pursuing or the best option to defend against a claim.

Before any formal action is taken, we:

- Review the estate plan and amendments
- Analyze financial records (if available)
- Evaluate trustee conduct
- Identify potential claims (breach of fiduciary duty, undue influence, lack of capacity, etc.)
- Assess collectability and cost-benefit



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At this stage, we're asking:

- Is there real wrongdoing?
- Is there enough money at stake to justify litigation?
- What is the likely range of outcomes?
- And if you're defending against a claim, what is the best strategy to navigate through the claim?

**Typical timeframe:** 2-6 weeks (depending on document availability)

## 2. Demand Letter

**Goal:** Attempt early resolution before battling in court.

A demand letter is a letter to the opposing party or their attorney (if they have retained legal counsel) which:

- Outlines legal claims or defenses
- Identifies requested remedies (accounting, repayment, removal, settlement, etc.)
- Sets a deadline to respond

Sometimes this step results in:

- A voluntary accounting
- Settlement discussions
- Mediation before a petition is filed

Other times, it makes clear litigation is necessary.

**Typical timeframe:** 2-4 weeks for response

## 3. Filing the Petition (Opening the Case)

If informal resolution fails, we file a Petition in Probate Court.

In California, trust and estate disputes are generally filed in the Probate Division of the Superior Court in the county where the trust or estate is administered.



Common petitions include:

- Petition to compel accounting
- Petition to remove trustee or administrator of the estate
- Petition for surcharge (financial recovery from the trustee or estate administrator)
- Petition to invalidate trust or amendment or will
- Heggstad petitions (common when property is accidentally left outside of a trust)

Once filed:

- A hearing date is set (often 8-10 weeks out, but sometimes several months depending on the County)
- All interested parties must be formally served

**Typical timeframe:** 2-4 months to first hearing

## 4. Trustee Response & Early Court Hearings

The trustee (or opposing party) will typically:

- File a written Objection to the Petition
- Deny wrongdoing
- Raise defenses

At the first hearing, the court may:

- Set a litigation schedule
- Order mediation
- Require an accounting
- Continue the matter for further proceedings

Important: Probate judges rarely decide complex disputes at the first hearing. The Court usually continues the matter to allow the parties time to conduct the next phases of litigation.



## 5. Discovery Phase (Information Exchange)

**Goal:** Obtain evidence to prove your claims (or defend against claims).

Discovery may include:

- Written interrogatories (formal questions)
- Requests for production of documents
- Subpoenas to banks, medical providers, and other third parties
- Depositions (live sworn testimony outside of the courtroom)
- Expert witnesses (capacity experts, forensic accountants)

This is often the longest and most expensive phase. It's also where cases are won or lost.

**Typical timeframe:** 6-12+ months (Complex financial cases can take longer.)

## 6. Mediation & Settlement Negotiations

Most trust and estate litigation cases settle before trial. Courts often require mediation once enough information has been exchanged. Mediation involves:

- A neutral third-party mediator (often a retired judge or experienced probate attorney)
- Confidential negotiations
- A full-day session (sometimes longer)

Possible outcomes:

- Financial settlement
- Trustee resignation
- Restructuring of trust administration
- Buyout agreements
- Case dismissal
- Or no outcome. Mediators cannot issue rulings. The parties either reach an agreement of some kind or they don't, and it's back to litigation.

If settlement is reached, a written agreement is signed and the case concludes.



## 7. Pre-Trial Motions

If the case does not settle, attorneys may file:

- Motions for summary judgment
- Motions to compel further responses to discovery

These motions can narrow issues and clarify what will actually be decided at trial or force the other side to provide more information.

## 8. Trial

Trust and Estate litigation trials in California probate court are typically **bench trials** (decided by a judge, not a jury).

At trial:

- Witnesses testify
- Experts present opinions
- Financial evidence is analyzed
- Medical records are submitted
- Attorneys make legal arguments

Trial length:

- 2-3 days for simpler matters
- 1-2+ weeks for complex financial or undue influence cases

After trial, the judge may:

- Issue a ruling immediately
- Take the matter under submission and issue a written decision later

## 9. Post-Trial Issues

After judgment, the court may:

- Enter financial awards (surcharge)
- Order trustee removal
- Award attorney's fees (in some cases)

The losing party may appeal, which can extend the timeline by another year or more.



# How Long Does Trust Litigation Take?

Most litigated trust and estate cases take **18–24 months** from filing to resolution. Highly contested cases can take longer.

Early settlement can shorten this dramatically.

## What Drives Cost?

The biggest cost factors are:

- Amount of discovery required
- Number of depositions
- Use of experts
- Level of hostility between parties
- Trial preparation

Trust and estate litigation is never “cheap.” The key question is whether the likely recovery justifies the cost and stress.

## Emotional Reality: What Many Clients Don’t Expect

Trust and estate litigation is often family litigation. You may experience:

- Strained sibling relationships
- Public disclosure of private finances
- Aggressive legal tactics
- Delays and procedural complexity

Having clear expectations at the beginning reduces stress later.



# How Fox Law Guides You Through the Process

At Fox Law, our role is not just to litigate; it's to provide clarity and strategic direction. We help clients:

- Evaluate whether a case is worth pursuing
- Apply cost-benefit analysis at every stage
- Use pressure strategically (not emotionally)
- Push toward efficient resolution when possible
- Prepare thoroughly when trial is necessary

Every major decision is made with your long-term financial and personal goals in mind, whether that involves filing, settling, mediating, or trying the case.

## Final Thought: Litigation Is a Tool, Not the Goal

The goal is not to “win a fight.” The goal is to protect your inheritance, enforce fiduciary duties, and reach a financially rational outcome.

Understanding the roadmap helps you make informed decisions and reduces fear of the unknown.

If you are considering trust and estate litigation, the first step is a strategic case evaluation so you can understand your options before committing to the process.

Schedule a no-cost initial consultation with Fox Law to evaluate your position and build your strategy. **Contact us at [foxtrustlaw.com](https://foxtrustlaw.com) to get started.**

