

Please transpose this template to your firm's letterhead and provided the requested information.

FIRM NAME: _____

DATE: _____

ESTATES PROBATE AND TRUST UNDERWRITING QUESTIONS

Claims made against attorneys who practice in the area of Estates, Probate and Trust have been steadily increasing. As we are experiencing the largest transfer of wealth than at any other time in our history, this trend will likely continue for years to come.

Five risk management recommendations that may decrease the odds that your firm will draw a claim arising out of this area of practice are as follows:

1. Document the file to reflect the client's understanding of the estate plan; this will reduce the chance that an unhappy beneficiary will successfully allege that the plan inadvertently frustrates the testator's wishes. Be aware that certain states have expanded privity so that a beneficiary may now maintain a legal malpractice claim even if he or she was not the direct client.
2. Document the file to reflect the scope of services if your services do not include tax advice or form filing; in particular, and if appropriate, the file should indicate that you are not responsible *for the filing of gift tax forms*, a common source of confusion.
3. If any individual is involved with estate planning decisions other than the client, and if that individual benefits from the estate plan, undue influence allegations may follow. Further, conflict allegations may arise if it appears that the attorney's loyalty was split between family members. Keep children and/or beneficiaries out of the room and off correspondence.
4. Beware if a client requests a sudden change to a long held estate plan, especially if the new plan negatively or drastically effects a child's inheritance or provides for individuals who are outside the nuclear family. In such a situation, attorneys should be prepared for allegations that the new plan is a product of undue influence or duress.
5. Attorneys should carefully consider all risks before agreeing to serve as a Trustee or Executor. Serving as a Trustee or Executor includes much critical oversight, and it is good practice for a Trustee or Executor to have the Court approve every action taken, even if the heirs or beneficiaries are aligned and getting along. Avoid hiring your own law firm to serve as counsel for the trust.

We request that you provide additional information relating to Estates, Probate and Trusts:

1. What is the highest value of any one Estate or Trust that is handled in any capacity by the law firm? _____
2. How many Estates are \$5,000,000 or greater for which the firm provides services? _____
3. How many Trusts are \$5,000,000 or greater for which the firm provides services? _____

X _____

Signature of Firm Principal