

# The Top Ten Tips for Avoiding Estate and Trust Litigation Through Planning and Into the Administration Phase

1. **Get to Know Your Client.** Understand what motivates your client and his or her estate planning goals so that you can effectively carry out your client's wishes.
2. **Understand Family Dynamics.** Inquire about the beneficiaries and learn as much as you can about the dynamics of the testator's family so you can draft an estate plan that accomplishes your client's wishes and has the least likelihood of being challenged by a beneficiary.
3. **Know the Law.** Stay up to date on the current case law so that you can anticipate how an estate plan might be attacked and take preventative measures while drafting to protect your client's wishes.
4. **Watch for Signs of Undue Influence.** Be aware of signs of undue influence such as a client who is being encouraged by a beneficiary to draft an estate plan that will favor the beneficiary and/or requests for other drastic or unprecedented changes to the client's estate plan. Take steps to protect the client from outside influence.
5. **Assess the Testator's Capacity.** Ensure that your client understands what assets they have, their family situation, and can explain the disposition they want. If you have concerns about your client's capacity, take additional steps to ensure that they have capacity.
6. **Select a Trustworthy and Competent Personal Representative, Agent, and/or Trustee.** Advise your client to select a personal representative, agent, and/or trustee that is trustworthy and appropriate for the administration of the client's wishes and estate plan. Depending on the family dynamics and the assets in the estate, consider involving a neutral, professional fiduciary.
7. **Communication Is Key.** Good communication can go a long way in preventing a dispute. Get to know the beneficiaries of the estate or trust and provide regular updates to the beneficiaries about the assets and your actions.
8. **Understand the Governing Document and Your Duties.** Carefully review the governing document. Understand the distribution standard and any other obligations you or your client may have under the governing document. Understand the statutory duties and to whom these duties are owed.
9. **Involve Litigation Counsel Early.** Don't wait until a court action begins. Hiring counsel at the first sign of trouble is a great way to mitigate the conflict – or the damages. Having a new and fresh set of eyes on the situation is an added bonus and, if the situation doesn't get resolved, you already have counsel that is up to speed and ready to roll. Make sure the counsel you/your client hires is well versed in estate and trust litigation.
10. **Take Preventative Steps.** If possible, obtain the consent of beneficiaries prior to taking action and do not hesitate to petition the court for approval beforehand or ratification of transactions afterwards if there are concerns about any matter relevant to the administration of the estate or trust.

## Contact



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