

**TRUST/WILL BENEFICIARIES MAY BE ABLE TO SUE  
THE ESTATE PLANNING ATTORNEY FOR MALPRACTICE BASED ON THE  
NEGLIGENT DRAFTING OF THE WILL AND/OR TRUST**

In general, beneficiaries of a Trust or Will have no attorney-client relationship with the attorney hired by the Trustor to draft estate planning documents including a Trust and its Amendments and a Will and any Codicils. However, under certain circumstances, heirs and/or beneficiaries of a Trust or a Will may sue the estate planning attorney who drafted the Trust and/or Will at the request of the Trustor for malpractice based on the negligent drafting of the Will or Trust including codicils and/or amendments. The heir/beneficiaries will be considered intended beneficiaries, with standing to sue for attorney malpractice, where the attorney drafting the Trust and/or Will for malpractice provided the lawyer was hired by the Testator or Trustor to benefit the beneficiaries.

Some of the following cases where beneficiaries were permitted to file and pursue legal malpractice suits against the drafting attorney who negligently prepared the Will or Trust are as follows:

1. Beneficiaries permitted to sue estate planning attorney for malpractice where alleged negligent tax advice to the Trustor in drafting a Trust resulted in the reduction of a beneficiaries' shares;
2. Beneficiaries of an attempted Trust Amendment had a malpractice cause of action against a Trustor's attorney who failed to follow the procedures outlined in the Trust concerning how the Trust could be amended;
3. Beneficiaries were authorized to pursue a malpractice case against the estate drafting attorney who failed to obtain Court approval before attempting to amend the Trust as required by the Conservatorship Order;
4. Beneficiary was permitted to bring a malpractice action against drafting counsel retained by the Trustor where counsel failed to advise the Trustor that the proposed beneficiary, as a caregiver, would be presumably disqualified from receiving the bequest unless the Trustor obtained a Certificate of Independent Review.

The liability of the lawyer who drafts a Trust or Will to potential beneficiaries is limited. No liability to potential beneficiaries exists unless a legal defect in drafting prevents the estate

planning document (Trust or Will) from fulfilling the intent of the Trustor. Malpractice liability will not lie based on counsel's failure to adequately ascertain the intent of the Testator/Trustor or whether the Testator/Trustor had the capacity to sign the Trust and/or Will.

A beneficiary of an Estate Planning document will not have a malpractice claim against the lawyer who drafted the Estate Planning documents because counsel failed to obtain or negligently delayed in obtaining the execution of the Will or the Trust before the Testator/Trustor passed away. Furthermore, no malpractice liability will exist on the basis the Trustor/Testator intended to revise his or her Estate Plan to increase the beneficiary's bequest and would have done so but for the estate planning attorney's malpractice/negligence.

In essence, to support a trust or will beneficiary's malpractice claim against the attorney hired to draft the Trust and/or Will, a legal defect must exist in drafting the Will or the Trust that prohibits the Estate Planning document from accomplishing the Testator's intent. Thus, a lawyer, persuaded of his client's intent to dispose of his or her property in a certain manner, drafts the Trust or Will accordingly, fulfills his or her duty to the client and is not required to urge the client to consider an alternative plan to benefit others.

While intended beneficiaries of a Trust or Will may be permitted to bring an action for malpractice against the lawyer who drafted the Trust or Will, the circumstances are limited and generally time is of the essence.