

# PROFESSIONAL COUNSEL<sup>SM</sup>

ADVICE AND INSIGHT INTO THE PRACTICE OF LAW<sup>®</sup>

## Wills, Trusts and Estates - Professional Liability Fact Sheet

### Description of practice area

The practice area includes legal services dealing with all aspects of the analysis and planning for the conservation and disposition of wills, trusts and estates. Claims arising from both federal and state estate and gift taxes are included here. Also included within this area of practice are the preparation of legal instruments in order to effectuate estate plans, administer estates (including tax-related matters, both federal and state), professional services involving trust planning, guardianships, custodianships and conservatorships.

### Quick Stats

- Average of 500 claims reported per year
- Average of 220 claims paid per year
- Average cost per claim: \$100,000
- Average yearly cost of all wills, trusts and estates claims: \$23 million
- #1 claims area by count

Source: CNA Claims Data 2006-2014

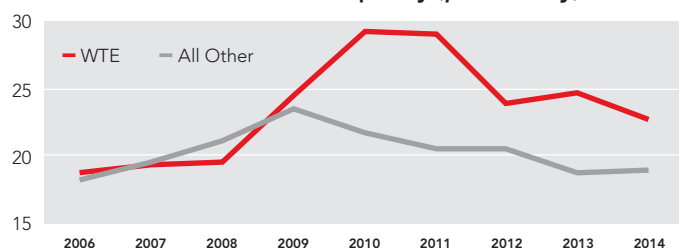
### Frequency of Wills, Trusts and Estates Claims

Claims frequency for the wills, trusts and estates practice area at CNA surged during the economic downturn of 2008, peaking in 2010. Today, claims frequency for wills, trusts and estates remains markedly higher than prior to the recession and constitutes the #1 area for claims frequency.

### Top causes of Wills, Trusts and Estates Claims

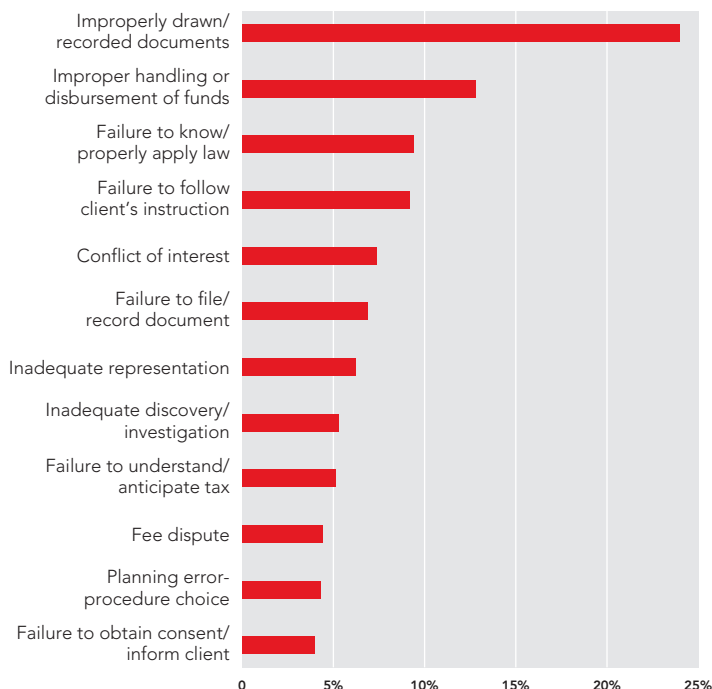
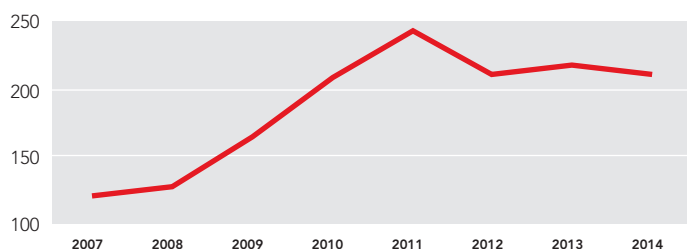
The most frequently alleged cause of wills, trusts and estates claims is improper document drafting or recording. The second most common cause is improper handling or disbursement of funds.

Historical Claim Frequency (per 1K atty)



Claim counts arising from Wills, Trusts and Estates have risen from an average of about 120 claims per year in 2007 to about 210 claims per year in 2014.

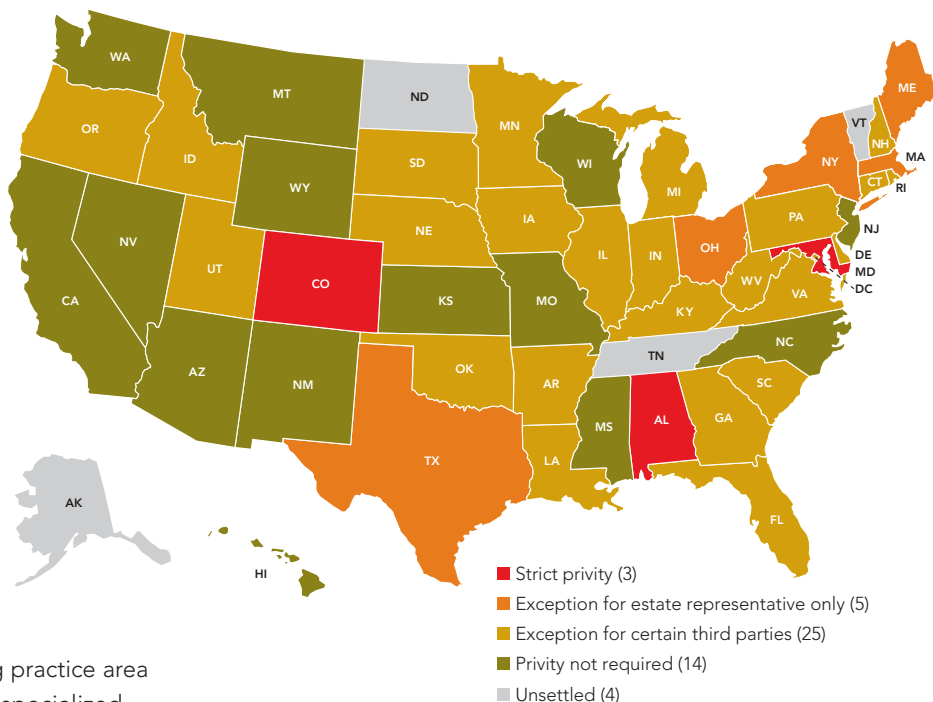
Count of WTE Claims Incurred Per Year



## Erosion of the privity defense

(As of September 2016)

The erosion of the privity requirement has led to an increase in malpractice claims. The majority of states generally require privity, but have carved out one or more exceptions to this rule. The most common exception enables a third party to bring a claim where the third party can prove that it was the intended beneficiary of the transaction. Another narrower version of the exception first requires a showing that the client's intent has been frustrated by the attorney's conduct. A handful of states permit claims brought on behalf of the estate by a personal representative of the client.



## Risk Management Tips

- The wills, trusts, estates, probate and planning practice area frequently involves complex issues requiring specialized legal experience and training. Lawyers should, therefore, avoid dabbling in this area of practice.
- Avoid representing friends or family members in trust and estate matters. If you decide to become involved in such matters, exercise due diligence and caution.
- For areas in which the lawyer does not have adequate experience, such as taxation or appellate work, lawyers should limit the scope of the engagement in a written engagement letter, if possible.
- Serving as a trustee, executor or administrator can present risk as the lawyer may be placed in the center of bitter family disputes, resulting in negative ramifications for the lawyer.
- Video or audio recordings of a decedent's intentions may be effective in defending against third party claims that the client lacked testamentary capacity or that his or her intent has been frustrated.
- Conflicts of interest can arise where a lawyer has represented multiple generations of family members. The routine use of engagement letters and conflict of interest waivers may provide an effective method for lawyers to identify and define the parties to whom the attorney-client relationship will apply in these scenarios.

## CNA Risk Control Resources

Visit [www.cna.com/lpriskcontrol](http://www.cna.com/lpriskcontrol) for *PROfessional Counsel* and *InPractice* practical guides, articles, industry trend studies and other self-help tools. CNA publishes informative articles addressing issues of interest to Wills, Trusts & Estates lawyers, including:

- "Watch Out for Trust and Estate Risk"
- "Potential Pitfalls for Lawyers Practicing in Fracking and Oil Rights"
- "Wills, Trusts and Estates Practice: Minimizing Exposure to Claims from Third-Party Beneficiaries"



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