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Wills, Trusts, and Estates for
Legal Assistants

Sixth Edition



Chapter Objectives

- Discuss the ramifications of estate planning malpractice
- Analyze the ethical concerns arising from joint estate planning for spouses
- Understand the ethical obligations of estate planning legal assistants
- List appropriate tasks for estate planning legal assistants
- Identify organizations that have adopted ethical guidelines for legal assistants

Malpractice (slide 1 of 2)

- The potential malpractice liability of an attorney for negligently preparing an estate plan is great because estate planning requires an especially high degree of competence.
- The attorney must have a thorough knowledge of many areas of the law, including wills, probate, trusts, taxation, **insurance**, property, **government benefits**, business associations, and domestic relations.



Malpractice (slide 2 of 2)

- The most common errors do not involve complicated or sophisticated matters. Instead, problems usually arise because of clerical errors in the preparation of wills and the attorney's failure to understand the effect of the language used in dispositive provisions, which results in beneficiaries not receiving what the testator or settlor intended.



Ethical Concerns

- Drafting attorney as beneficiary
- Drafting attorney as fiduciary
- Drafting attorney as fiduciary's attorney
- Drafting attorney as will custodian
- Representation of non-spousal relatives
- Fiduciary hiring self as attorney
- Capacity of representation



Paralegal Estate Planning Tasks

(slide 1 of 2)

- Conduct client interviews and maintain general contact with client after establishment of attorney-client relationship, so long as:
 - the client is aware of the status and function of the legal assistant and
 - the client contact is under the supervision of the attorney
- Draft legal documents for review by the attorney

Paralegal Estate Planning Tasks

(slide 2 of 2)

- Draft correspondence and pleadings for review by and signature of the attorney
- Attend executions of wills, real estate closings, depositions, court or administrative hearings and trials with the attorney
- Author and sign letters, provided
 - the legal assistant's status is clearly indicated and
 - the correspondence does not contain independent legal opinions or legal advice.

