

Hiring Counsel for Estate and Trust Administration Could Help You Avoid an Expensive Conflict



By [Alessandro A. Apolito](#)

October 19, 2022 | **ARTICLES**

Losing a family member or friend is a difficult situation for everyone. In 1969, the Swiss-American psychiatrist Elizabeth Kübler-Ross wrote in her book “On Death and Dying,” that grief could be divided into five stages: denial; anger; bargaining; depression; and acceptance. Despite how severe or long the grieving process is for you, a person’s death can require a time consuming and expensive process of administering the estate. While some estates are as simple as dividing tangible personal property and reimbursing a family member for funeral costs, many estates require a formal probate administration, which can last six to 12 months or more.

In Florida, the personal representative of an estate is required to have an attorney, who must help a lay person navigate the court system, the fiduciary obligations imposed by the Florida Probate Code, and the occasional unreasonable or litigious beneficiary. The personal representative is a fiduciary for both beneficiaries and creditors. Therefore, responsibilities include, but are not limited to, notifying all interested parties of their basic rights in the estate, identifying and collecting all estate assets, paying debts, distributing assets, and accounting for all the financial activity of the estate. The possibility for litigation in an estate administration can happen over

mistakes in administration, unequal distributions between beneficiaries, resentment over who is in control, or blended families with rocky relationships.

Unlike personal representatives, trustees appointed in a revocable or irrevocable trust are not legally required to have an attorney even though the requirements of the Florida Trust Code are just as strict as the probate code. Additionally, trust administrations tend to last many years. While people typically use trusts to avoid the probate process, there is still a possibility for litigation for all the same reasons.

Beneficiaries of an estate or trust are also not legally required to have an attorney. Unfortunately, many beneficiaries have the false impression that the personal representative's or trustee's attorney either represents the beneficiary too or is required to act in the beneficiary's best interests. This is simply not true. Beneficiaries will receive legal notices, be subject to deadlines to exercise certain rights, and be required to make complicated legal decisions. Additionally, the fiduciary handling the estate may be improperly handling the estate, or even worse, may be misappropriating the estate's assets.

We highly recommend that personal representatives, trustees, and beneficiaries hire counsel with trusts and estates litigation experience so that they can either try to avoid possible litigation or have the proper representation if conflicts should arise. Luckily, both personal representatives and trustees are allowed to hire professionals, at the expense of the estate, to ensure a proper administration of the estate. Hiring a professional could even possibly shield them from liability.

For questions or more information, contact practice team leader [David Siegfeld](#), 518.462.0110 x1425 or any attorneys in our [Trusts & Estates](#) practice at Lippes Mathias LLP to schedule a consultation.

Related Team



**Alessandro A.
Apolito**
Partner | Office
Leader, Jacksonville



David E. Siegfeld
Partner | Team
Leader - Trusts &
Estates

New York: Albany, Buffalo, Clarence, Long Island, New York City, Rochester, Saratoga Springs, Syracuse // **Florida:** Jacksonville, West Palm Beach
Illinois: Chicago // **Ohio:** Cleveland // **Oklahoma:** Oklahoma City // **Ontario:** Greater Toronto Area // **Texas:** San Antonio // **Washington, D.C**

Attorney advertising. Prior results do not guarantee a similar outcome.