



Fiduciary Litigation: Drafting Considerations Based on Lessons Learned

Presented by:
Dave Folz, Trust Counselor, LLC
Sarah Patel Pacheco, Jackson Walker LLC

© 2020 JACKSON WALKER LLP

1

Lesson No. 1:

Appreciate Common
Issues & Possible Drafting
Considerations.

2

Increased Litigation Potential



- Spouses: First, Second, etc.;
- Children;
- Intention to preference some beneficiaries over others;
- Non-traditional relationships;
- Closely held entities;
- Family recreational assets;
- Involvement of family members in financial matters;
- Beneficiaries with drug, alcohol or other dependencies;
- Too much power in some/too little in others.

AUSTIN | DALLAS | FORT WORTH | HOUSTON | SAN ANGELO | SAN ANTONIO | TEXARKANA | JW.com

3

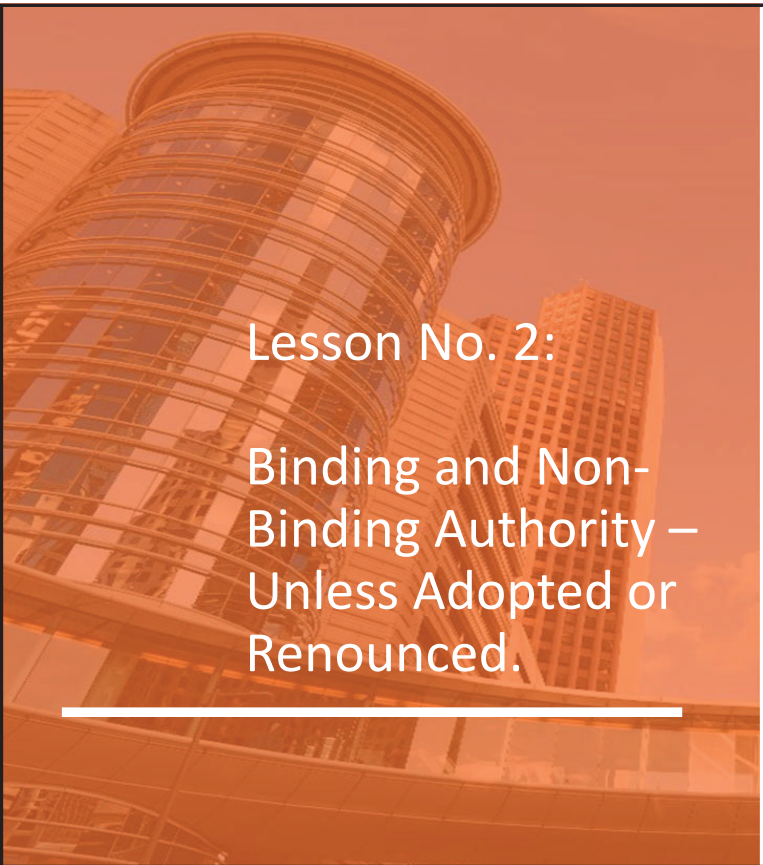
Initial Drafting Considerations



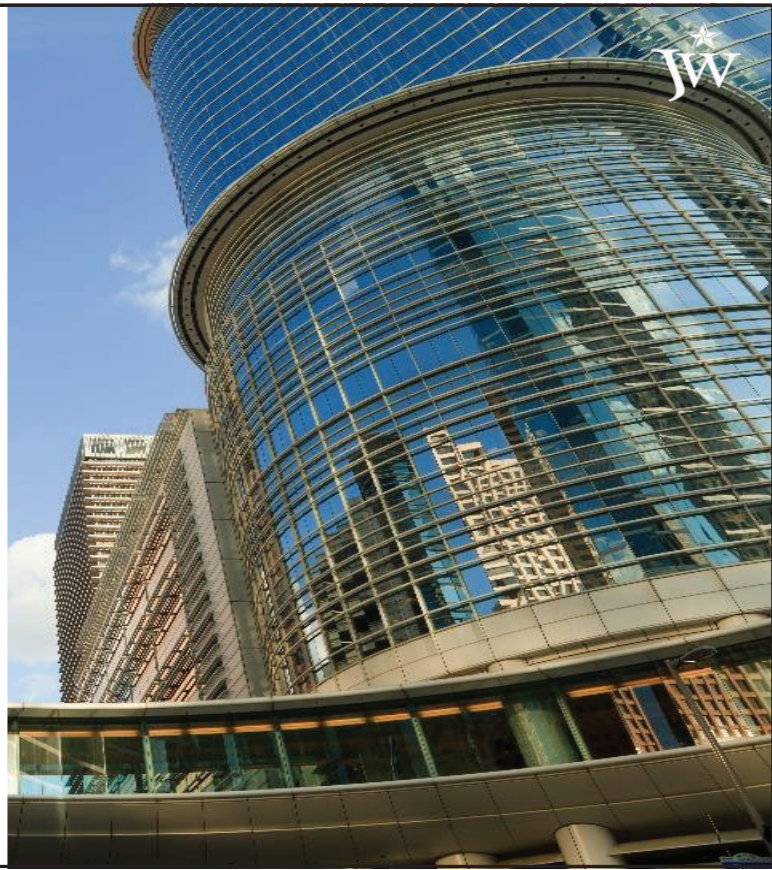
- Clear objectives: lifetime and at death;
- Planning to provide for possible conflicts of preferred fiduciaries;
- Planning for possible self-dealing desires and restrictions;
- Balancing or preventing some client's, fiduciary's and beneficiary's involvement in assets;
- Inserting incentives for beneficiaries and fiduciaries to comply with terms;
- Inserting disincentives for interlopers: lifetime and at death;
- Standards and protections for fiduciaries of all types.

AUSTIN | DALLAS | FORT WORTH | HOUSTON | SAN ANGELO | SAN ANTONIO | TEXARKANA | JW.com

4



Lesson No. 2:
Binding and Non-
Binding Authority –
Unless Adopted or
Renounced.



5



Binding Authority

- Trustees:
 - Trust Instrument;
 - Texas Trust Code; and
 - Existing Common Law.
- Executors:
 - Will and Codicils;
 - Texas Estates (& Some of Trust) Code; and
 - Existing Common Law.
- Agents:
 - Power of Attorney;
 - Texas Estates Code; and
 - Existing Common Law.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Drafting for the Trustee in a Challenging Environment

Also available as part of the eCourse

[Drafting for the Trustee in a Challenging Environment](#)

First appeared as part of the conference materials for the 25th Annual Estate Planning, Guardianship and Elder Law Conference session "Drafting for the Trustee in a Challenging Environment "