



## Fiduciary Litigation: Drafting Considerations Based on Lessons Learned

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Lesson No. 1:

Appreciate Common  
Issues & Possible Drafting  
Considerations.

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## 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.

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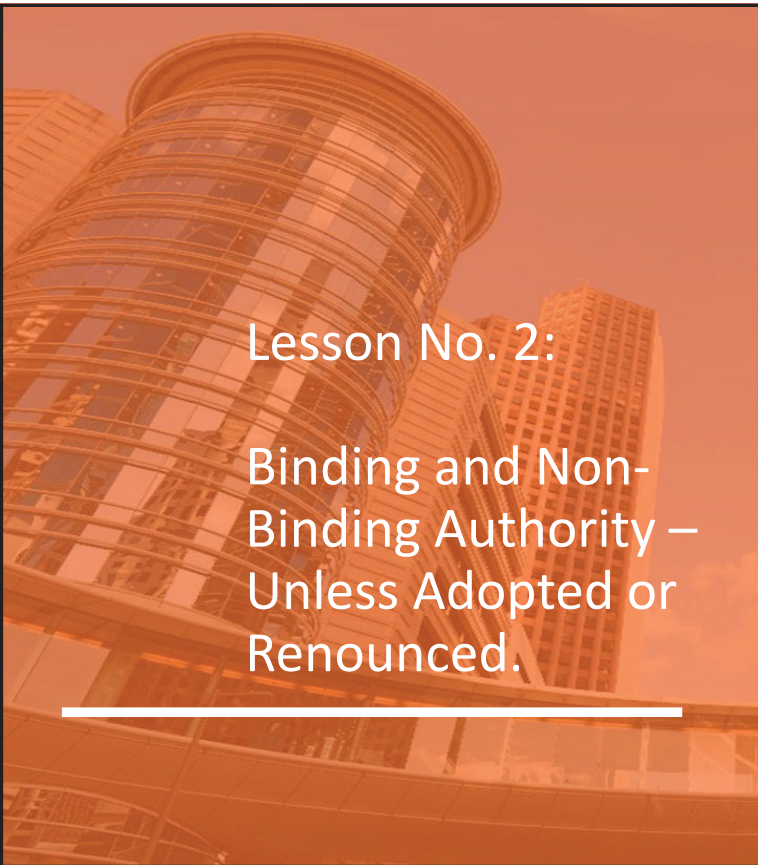
## Initial Drafting Considerations



- 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.

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



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## 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.

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## Title search: Drafting for the Trustee in a Challenging Environment

Also available as part of the eCourse

[2023 Estate Planning, Guardianship and Elder Law eConference](#)

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