CNA

PROFESSIONAL COUNSEL®

Advice and Insight into the Practice of Law®

Wills, Trusts & Estates Professional Liability Fact Sheet

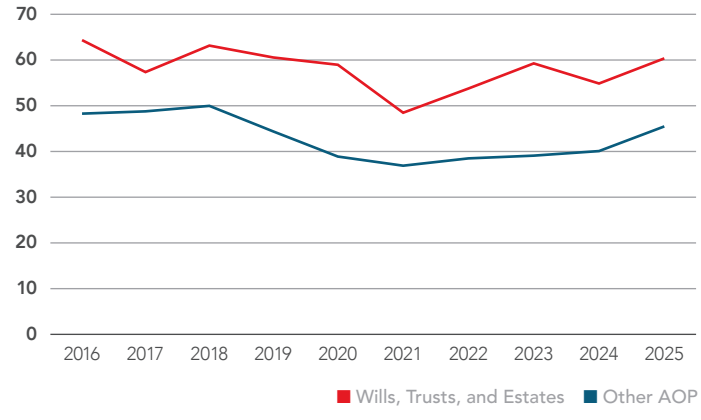
Description of Practice Area

The wills, trusts, and estates practice area includes legal services related to advising individuals, families, and others on how to plan for the management and transfer of assets during life and after death. Services include preparing wills, trusts, powers of attorney, and other estate planning documents; administering estates and trusts; addressing estate, gift, and inheritance tax matters; and assisting with guardianships, conservatorships, and other arrangements for managing the affairs of minors or individuals who are unable to manage their own affairs.

Frequency of Wills, Trusts, and Estates Claims

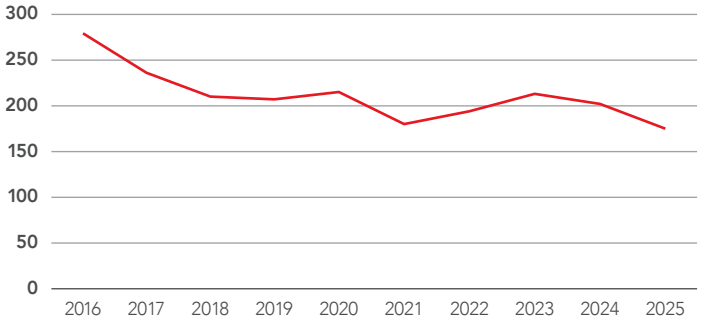
Claims frequency refers to the projected amount of malpractice claims for every 1,000 lawyers each year. Since 2016, the wills, trusts, and estates practice area has reported more claims per year than other area of practice. While dipping slightly in the immediate post-Covid era, claims frequency at CNA in the wills, trusts, and estates practice area has been largely consistent.

Yearly Reported Claim Frequency (Per 1,000 Lawyers)



Despite the increase in the projected *frequency* of reported claims, the number of projected claims *resulting in a payment* for the wills, trusts, and estates practice area has shown an overall decrease since 2016. Following a recent peak of approximately 212 paid claims in 2023, the number of projected claims resulting in a payment declined in both 2024 and 2025, reaching its lowest level of 175 in 2025 in the nearly ten-year period preceding 2025.

Claims Resulting in Payment by Year



Quick Stats

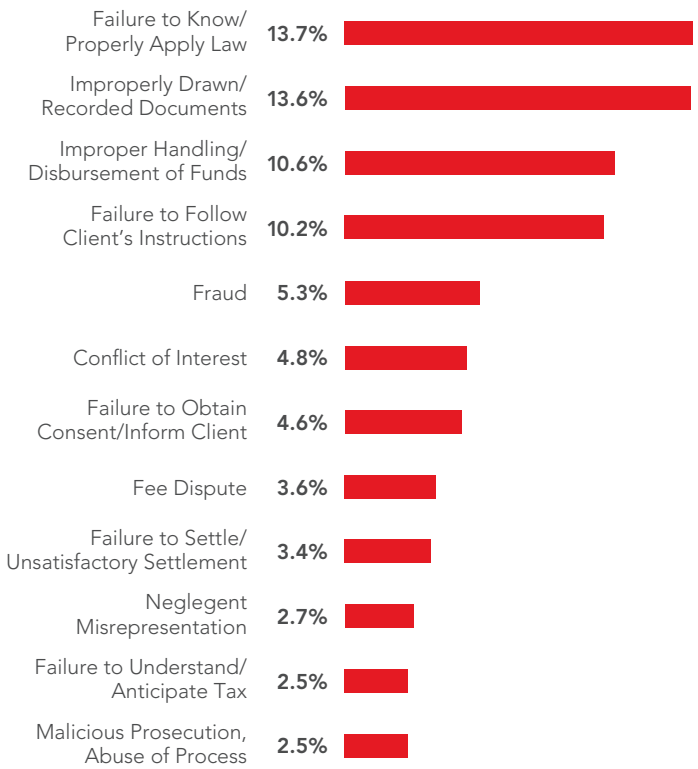
- Average number of claims reported per year: **477**
- Average number of claims paid per year: **211**
- Average cost per claim: **$95,508**
- Average yearly cost for all wills, trusts and estates claims: **$20.2 million**
- Practice area with the **highest amount** of **claims resulting in payments**

Top Allegations of Wills, Trusts and Estates Claims

The most frequent allegations presented by litigants in wills, trusts, and estates claims are:

- Failure to know and/or properly apply the law
- Improperly drawn or recorded documents
- Improper handling and/or disbursement of estate funds

Top Allegations for WTE Claims



Risk Management Tips

- The "Great Wealth Transfer" creates an unprecedented once-in-a-generation wealth transfer, with some estimates topping $100 trillion to be passed down to Generation X and Millennials. This translates into both client-facing issues and firm management concerns.
  - *Client-Facing factors:* more clients requesting help with estate settlements for all levels of wealth and estate planning, including complex transfer vehicles and the inevitable legal disputes stemming from those wealth transfers. These disputes may translate into protracted legal battles, including breach of fiduciary duty and third-party beneficiary claims against lawyers and law firms, particularly those in multi-role capacities when acting as executor, administrator, or trustee.
  - *Firm Management factors:* firms and their operations may also be impacted due to the ongoing retirement of Baby Boomer attorneys and the internal movement created by those departures. Firms should prepare with effective succession planning, which may be more unique than generational retirements of the past given the legal profession's current embrace of remote practice.
- In the meantime, avoid dabbling, particularly in the wills, trusts and estates practice area. This area of practice involves complex issues often requiring extreme familiarity with the constantly changing wills, trusts, and estates-related laws.
- Even for those experienced in the wills, trusts and estates area, well-drafted engagement agreements which clearly identify who the client is and narrowly limit the scope of representation are necessary to minimize potential exposure. Just as important as identifying who the client *is*, proactively including who is *not* the client in the agreement helps reduce any ambiguity surrounding who is covered under the attorney-client relationship. To help avoid "scope-creep" and any ambiguity regarding what services the lawyer is actually providing, lawyers should craft and adhere to narrowly limited scope of representation language. This is particularly important when lawyers are asked to serve in multiple roles such as an investment trustee. In those circumstances, lawyers may need to go one step further to mitigate exposure by retaining outside experts.
- Conflicts of interest continue to be the number one driver of claims and are particularly important in the wills, trusts, and estates practice area in situations when a firm has represented multiple generations of family members. The implementation of well-crafted written engagement letters – combined with current or advance conflicts of interest waivers – may provide an effective method for lawyers to mitigate the potential exposure created by those conflicts.

CNA Lawyers Risk Control Related Resources

Visit CNA's Lawyers Professional Liability Email Subscription Center to sign up to receive *Professional Counsel* and *In Practice… with CNA*'s practical guides, articles, industry trend studies, and other self-help tools. CNA also publishes informative articles addressing issues related to wills, trusts and estates practitioners, including:

- *Second Chances Abound: Opportunities for Correcting Certain Omissions and Mistakes in Tax Elections*
- *Advance Conflict Waivers: Use Them or Lose Them*
- *Lawyers Toolkit 5.0*

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Christopher Heredia is a Risk Control Consulting Director for CNA's Lawyers Professional Liability Program. He is responsible for developing content for CNA's Risk Control services by providing guidance to CNA's insureds on risk control and professional responsibility-related issues. Prior to joining CNA, Chris was an attorney with Am Law 100 firm in Chicago where he focused his practice in legal ethics, law firm risk management, and commercial litigation. Prior to his time in private practice, Chris served in the public sector, first as an Assistant State's Attorney with the Cook County State's Attorney's Office in Chicago, and later as Litigation Counsel for the Illinois Attorney Registration and Disciplinary Commission where he worked to regulate the legal profession in Illinois. He is admitted to practice in Illinois, the U.S. District Court for the Northern District of Illinois, and the U.S. Supreme Court.

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