

**Avoiding Pitfalls,
Preparing for Potholes
and Surviving Speed
Bumps**


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Overview

1. Why should we educate fiduciaries?
2. Who is our client?
3. What is our liability/responsibility?
4. Educating the Principal
5. Educating the Fiduciary
6. What happens when things go wrong?

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Why bother?

1. Providing an added service to clients
2. Building relationships
3. Distinguish yourself from “estate plan in a box”
or online planning
4. Prevent conflicts and misunderstandings
5. Protect against malpractice claims

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Who is the client? 

1. CRITICAL issue
2. May not be clear
3. Need to define clearly and in writing to all involved

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What is our liability/responsibility? 

1. MRPC 1.2
2. Some case law supports principal or beneficiaries having claims against attorney for acts of fiduciary

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Educating the principal 

1. Careful review of documents
2. Discussion of roles and responsibilities
3. Encourage dialogue with named agents
4. Authorize third party oversight
5. Advance authority to discuss with agent and/or represent agent

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Educating the Fiduciary – The Basics 

1. Who Is Your Client?
2. Self-dealing
3. How do they show authority?
4. How to act
5. Managing money
6. Recordkeeping
7. Responsibilities
8. Reports

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Educating the Attorney in Fact 

1. Scope of authority
2. How to use authority
3. Accountability

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Educating the Guardians and Conservator 

1. Power and authority
2. Duties

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Educating the Trustee 

1. Guidebook
2. Rules for distributions
3. Responsibilities
4. Reports

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When Things Go Wrong 

1. Court Authorized Action
2. Withdraw from the case
3. Take action against the fiduciary

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