

Estate Planning: Naming fiduciaries

Choosing the proper fiduciaries for your estate plan

One of the most important parts of estate planning is choosing a person you trust to manage your assets or implement your plan, should you become incapacitated (temporarily or permanently) or pass away. This person would be your fiduciary.

What is a fiduciary?

In short, a fiduciary is a person or entity with the power and the affirmative duty to act on your behalf and in your best interest (or that of your trust or estate).

Why are fiduciaries important?

When you work with a fiduciary, you're minimizing potential conflicts of interest while building trust from the beginning.

How fiduciary duty works

Fiduciary duty follows the terms of the role they are to play. Be it a guardian or executor, the terms come from the will or the court. Duties can include taking care of children, paying bills, and managing property or assets for educational purposes. Sometimes fiduciary duty means protecting someone from themselves.

Types of fiduciaries

There are many types of fiduciaries. Some of the common types include:

- Guardian (for children)
- Executor or personal representative
- Agent for financial power of attorney
- Agent for health care directive
- Trustee

Who should you name?

As you can imagine, it's essential to name the right people or institutions to fill these positions. Not only must they be trustworthy and well-intentioned, but they must also be mentally competent, emotionally capable, and willing and available to devote the time necessary to ensure your wishes are carried out correctly.



A cautionary tale

Hazel had four children that she loved deeply. And so, when it came time for her to name her fiduciaries, it felt like the right thing to do to name all four children. As it turned out, it might have been the wrong decision. Ten days before her 79th birthday, Hazel suffered a stroke. Because all four children were designated as Hazel's agents for her health care directive, the doctor had to reach out to all four – and they had to make a unanimous decision – on her care. Wasting time is never a good idea when time is of the essence.

Problematic fiduciaries

Many people assume that their close friends and family members should automatically become their fiduciaries, but this assumption can cause problems for trustees, executors, and beneficiaries alike. Some common problematic fiduciaries include:

- **Incapacitated parents** As our parents' age, they are often at greater risk of becoming mentally incapacitated and unable to carry out their fiduciary duties for their child's estate or trust.
- **Bitter siblings** If conflicts arise impacting your decision to have a sibling manage your wishes and assets, you may want to reconsider naming them as your fiduciary and prevent the use of your assets as revenge collateral.
- **Too many cooks in the kitchen** As our cautionary tale pointed out, having more than one person in the same role can lead to delays or differences in opinions.

Getting started

Consider who you would name for the fiduciary role and who you'd choose as alternates. Ideally, you should name two successors to your primary choice.

Terms to know

- **Beneficiary:** A beneficiary is a person or entity legally designated to receive the benefits from your insurance and financial products.
 - **Estate planning:** Estate planning is a process that determines how your money and other property should be managed during your life and after your death. Wills and life insurance are components of the process.
 - **Fiduciary:** A person or entity with the power and the affirmative duty to act on behalf and in the best interest of another individual, trust or estate.
 - **Financial power of attorney:** A document that gives someone permission to act on another person's behalf.
 - **Health care directive:** A medical or health care power of attorney is a type of advance directive in which you name a person to make decisions for you when you are unable to do so.
 - **Trust:** A legal arrangement intended to ensure a person's assets eventually go to specific beneficiaries.
 - **Trustee:** A person who acts as a custodian for the assets held within a trust.
 - **Will:** A legal document that directs how your assets will be distributed when you are gone. It's basically a roadmap for the courts to follow.
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