

ESTATE PLANNING ROLES AND RESPONSIBILITIES

One of the most important aspects of estate planning is the selection of **fiduciaries**. This is the “who does what” part of your estate plan. A **fiduciary** is a person who serves in a trusted role and is subject to the highest level of care the law requires. Often, spouses initially appoint each other, however, you need to decide who will fill some or all the following fiduciary roles after that:

Executor

An Executor is the person or institution nominated under your Last Will & Testament to manage your probate assets after your death. These are assets you own at your death that are not otherwise transferred by beneficiary designation, jointly owned, or already titled to your revocable trust. The Executor is responsible for gathering and protecting your assets, paying your bills and creditors, preparing and filing your income tax, preparing an inventory of probate assets for the probate court, managing probate assets until distribution to the beneficiaries, making the final distributions to beneficiaries (or your revocable trust) and providing a final (and periodic) accounts to the probate court. The Executor should be someone who has some financial background, detail oriented, and able to complete tasks. If this person is also a resident of Ohio, we can waive bond for the executor. If they are not a resident of Ohio, the probate court may require them to post an executor’s bond, or otherwise require an attorney to be a co-signer of the estate account. This can be your spouse, a trusted family member, friend, bank trust department or other professional executor such as a lawyer with significant experience in probate and tax matters. Often, but not always, the person designated as Executor is also the same person you designate as successor Trustee.

Trustee

A Trustee is the person or institution responsible for managing assets in your revocable trust, either during your lifetime if you are disabled, or after your death. The Trustee manages the trust assets according to various state and federal laws and according to the instructions set forth in the trust agreement. A Trustee is charged with several general duties, such as a duty of loyalty to the beneficiaries, a duty of impartiality among beneficiaries, and a duty to act in the best interests of the beneficiaries, given the terms of the trust. A Trustee must manage and protect trust assets, invest trust assets according to a Prudent Investor Rule as applied to the terms of the trust and the needs of the beneficiaries, keep accurate accounts of the assets, income and disbursements of the trust assets, provide periodic reports to the beneficiaries, make distributions to the beneficiaries as required by the trust instrument and also in the judgment of the trustee would be beneficial for the beneficiaries, and prepare tax returns and pay taxes attributed to the trust. A trustee should be comfortable with monitoring investments, working with investment advisors, good at keeping records and also good at working with the beneficiaries to determine how the trust can be used to both accomplish your wishes as set forth in the trust agreement and also help the beneficiaries learn to appropriately use financial resources. This can be your spouse, a trusted family member, friend, bank trust department or other professional trustee such as a lawyer with significant experience in trust and tax matters. Often, but not always, the person designated as Trustee is also the same person you designate as your Executor.

Trust Protector

A Trust Protector is a person you designate who has the power to remove the Trustee and appoint a replacement trustee if you do not otherwise want the beneficiaries to have this power. This provides an outside check on the Trustee if the Trustee is not adequately performing its duties or otherwise not being responsive to the beneficiaries. Often clients will designate a trusted family member or other trusted advisor as the trust protector, especially when using a corporate or professional Trustee. This helps ensure that the Trustee will be responsive to the beneficiaries.

Guardian

If neither parent of a minor child is living or competent, a Guardian is appointed by the Court for that child. A Guardian is the person who will oversee raising minor children until they turn 18. Your children are not required to live with the Guardian, but often this is the case. A Guardian manages any financial assets left to a minor child, works with the Trustee to be sure the minors have appropriate resources, and otherwise makes day-to-day decisions such as health care and what schools to attend. In effect, they are a substitute parent. A Guardian can also be appointed for an incapacitated adult. It is a good idea to also designate an alternate Guardian in case the first person cannot serve.

Financial Power of Attorney Agent

An Agent designated under a Durable Power of Attorney is a person you designate to handle financial matters relating to assets you own personally (and not otherwise in trust-which are managed by the Trustee). An Agent under a financial power of attorney is often referred to as an "Attorney in Fact." This person should have similar attributes to your Executor but does not need to be the same person.

Health Care Agent

You can designate a person to make health care decisions for you under a Health Care Power of Attorney. This person will make health care decisions for you if you are otherwise unable to do so. You can also authorize them to consent to, or refuse, artificial life support or other life sustaining procedures if you are terminally ill or in a permanently unconscious state. Since these decisions require different skills, often your Health Care Agent is different from the people you designate to deal with financial matters, but they can also be the same. Often too, spouses may have different alternate health care agents.

I hope these descriptions are useful. Please consider these roles carefully and let me know who you would like to designate to serve. If you have any questions or need further guidance on options for filling these roles, please feel free to contact me.