

Estate Planning Roles and Responsibilities



One of the most important aspects of estate planning is selecting a fiduciary. A spouse is often the obvious choice; however, when planning your estate, you'll need to consider who would best fill the various fiduciary roles.

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One of the most important aspects of estate planning is the selection of “fiduciaries.” That is the “who does what” part of your estate plan. A “fiduciary” serves 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.

An executor is a person or institution you nominate to manage your probate assets after your death.

Executor

An Executor is a person or institution nominated under your Last Will & Testament to manage your probate assets after your death. Those are assets you own 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, creating an inventory of 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) account to the probate court.

The Executor should be someone who has some financial background, is detail-oriented, and can complete tasks. If this person is also a resident of Ohio, we can waive the 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 need an attorney to co-sign the estate account. That can be your spouse, a trusted family member, friend, bank trust department, or another professional 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.

A Trustee has several duties, including a duty to act in the best interests of the beneficiaries.

Trustee

A Trustee is a 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 the instructions outlined in the trust agreement. A Trustee has several general duties, including 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, keeping records, working with the beneficiaries to determine how to use the trust to accomplish the wishes outlined in the trust agreement, and helping the beneficiaries learn to use financial resources appropriately.

The Trustee can be your spouse, a trusted family member, friend, bank trust department, or other professional 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 appoint as 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. That provides an outside check on the Trustee if the Trustee does not adequately perform its duties or is not responsive to the beneficiaries.

Often clients will designate a trusted family member or other trusted advisor the trust protector, especially when using a corporate or professional Trustee. That helps ensure that the Trustee will be responsive to the beneficiaries.

Guardian

If neither parent of a minor child is living or competent, the Court appoints a Guardian for that child. A Guardian is a person who will oversee raising minor-age children until they turn 18. Your children are not required to live with the Guardian, but often that is the case.

A Guardian manages any financial assets left to a minor child, works with the Trustee to ensure 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.

The Court can also appoint a Guardian for an incapacitated adult. It is a good idea to designate an alternate Guardian if the first person cannot serve.

You can designate a person to make health care decisions for you under a Health Care Power of Attorney.

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, often referred to as an “Attorney in Fact,” 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. That 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 those decisions require different skills, your Health Care Agent is often different from the people you designate to deal with financial matters, but they can also be the same. Spouses often have separate alternate health care agents.



I hope you find these descriptions helpful. Please consider these roles carefully and let me know whom 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.

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