What it Means to Act as Fiduciary

(And How to Choose the Best One for You)

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For most people, when it comes time to have your estate planning documents drafted, the majority of the time and attention is spent on determining how your assets will pass on your death. You have considered at what age you want your heirs to receive money, which beneficiaries may need the protection of assets staying in trust, and any other special considerations your situation may warrant. Often though, the decision as to whom to name as trustee – i.e., the person responsible for managing all aspects of your trust(s) – and executor (or personal representative in some states, including Florida) – i.e., the person responsible for managing all aspects of your estate – does not get the same amount of thought. However, choosing your fiduciary can have a substantial impact on your overall estate plan.

The duties of a fiduciary are governed by state law and the terms of the will/trust, and include the following:

- Interpreting and following the terms of the document
- Collecting and administering assets
- Investing assets
- Filing federal and state income tax returns for the trust/estate
- Making initial and ongoing tax elections
- Exercising discretion over trust distributions
- Keeping beneficiaries informed
- Obtaining appraisals for any unique assets

Consequently, the choices made by the fiduciary may impact:

- Timing and amount of distributions beneficiaries receive
- How assets are taxed
- Investment allocations and returns
- In certain cases (generally, when a beneficiary is disabled), whether a beneficiary continues to qualify for government benefits

All of these decisions, made by the trustee, will determine how your estate plan will be fulfilled.


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Oftentimes people default to naming a family member or close friend to serve as their fiduciary. One of the advantages of that arrangement (and why it is often done) is that this person will have personal knowledge of your family situation, important family dynamics, and will likely be familiar with your financial values and wishes. They may know if you have a beneficiary who is less financially responsible, who has special needs, or any other unique needs of your beneficiaries. This puts them in the best position to make decisions as you would have done yourself.

On the other hand, it may be difficult for someone close to you to be objective when it comes to making decisions for distributions to beneficiaries. They may have a hard time saying no to that beneficiary who overspends due to an emotional connection or end up feeling like they're torn between their fiduciary duty and their personal/familial relationship. Individual trustees will likely need to hire outside experts to assist in carrying out their duties, either as it relates to investments, interpreting the terms of the governing documents, or preparing tax returns. Moreover, individuals may lose competency over time, or may make mistakes that, without the benefit of checks and balances, cannot be prevented or caught; in such cases, there is no guarantee that the trust will be able to recover all or even a portion of the lost funds.

As an alternative, some people choose to appoint a professional trustee, such as a trust company or lawyer. Estate and trust administration can be time-consuming, and professional trustees have the expertise, knowledge and technology to be able to administer them efficiently and effectively. Particularly in complex estate planning, where complicated tax elections or other trustee/executor decisions have important ramifications, professional fiduciaries are well suited to understanding how to make these determinations. Additionally, professional trustees may be better situated to act impartially, outside of the constraints of familial relationships and dynamics. Trust companies can provide continuity in the fiduciary role, maintaining relationships over multiple generations and seamlessly continuing administration over the life of the estate/trust. They also have controls in place to ensure the trust is properly administered throughout its existence and are appropriately insured if an issue is discovered.

One approach that works particularly well is pairing a family member or friend with a trust company as co-trustees. In these situations, the burden of day-to-day administration, record-keeping, tax preparation, etc. can be handled by the corporate trustee, while distribution and/or investment decisions can be made jointly by the co-trustees. This balances the advantages of an individual trustee who has close personal knowledge of the family, its dynamics and goals, with the strengths of a corporate trustee who can act impartially and help guide (and in some cases, serve as a buffer, for) the individual trustee during difficult decisions. In situations where the family member or friend is uncomfortable saying no, the corporate trustee can take that on, allowing the individual trustee to maintain a comfortable relationship with the beneficiary.

Acting as a fiduciary entails great responsibility and has a significant impact on the implementation of any estate plan. As a result, choosing the right fiduciary is a key component of having a successful estate plan that should not be overlooked.

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