

Fiduciaries in Estate Matters: Who Do You Trust?

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As part of the estate planning process, clients nominate trusted friends or family members (or sometimes, banks or other institutions, depending on the role) to serve key roles: Executor, Trustee, Guardian, Agent under a Power of Attorney, Health Care Representative and Funeral Agent. Clients, as well as these individuals they intend to appoint, understandably want an explanation of the responsibilities of each of these key roles. Most importantly, as fiduciaries, each of these administrators will step into a role where they will have a duty to act in the best interest of the principal.

What is an Executor?

The first fiduciary that we will focus on is the Executor. The Executor is nominated by the person making a Last Will and Testament and the nominee is set forth in the Last Will and appointed by the Surrogate following the decedent's death once the Last Will has been admitted to probate. Notably, a nominated Executor may decline the appointment; they have the option of saying, "thanks, but no thanks." In that case, a successor Executor will be appointed, or if the Last Will does not name a successor, the Surrogate will appoint an alternate. We always encourage the recommendation of a backup to avoid the appointment of an individual who has no knowledge of the estate or those individuals who are named as beneficiaries. The Executor has no role or responsibilities until the death of the person who was written the Last Will.

The Executor is charged with gathering the decedent's assets, paying taxes and debts and distributing the assets according to the controlling documents (the Last Will and/or Trust Agreement). The Executor handles all the day-to-day tasks during the period of the administration. The Executor's job ends when the decedent's liabilities are settled and the decedent's assets have been distributed to the beneficiaries.

An Executor does not need to be financially savvy or experienced in business matters. The most important quality of an Executor is the ability to manage day-to-day duties and to seek out, when necessary, when they should ask for help from an advisor. Depending on the particular circumstances of the estate, there may be mountains of paperwork and things to attend to or very little work at all. The complexity of some administrations calls for the Executor to engage professional advisors, while other administrations will be uncomplicated and quickly concluded.