

HOW TO PICK A TRUSTEE, PERSONAL REPRESENTATIVE, AGENT, AND HEALTH CARE SURROGATE

A common term we use (and get asked about) is “fiduciary”. Most people want to know what a fiduciary is and why that term should make them feel more comfortable with the powers they’re granting to others. Well, a fiduciary is someone (either a person or organization) that acts on behalf of another person to manage assets. This involves the highest legal duty of one party to another- being a fiduciary requires being bound ethically to act in the other's best interests.

Trustees, Personal Representatives, and Agents are all examples of fiduciaries. When you pick Trustees, Personal Representatives, and Agents in your estate plan, you’re picking one or more people to make decisions in your and your beneficiaries’ best interests and based on the instructions you leave. Luckily, understanding the basics of what each of these terms means and what to consider when deciding on who to choose can make your estate plan work far better.

Trustee

A revocable living trust is often the center of a well-designed estate plan because it is simply the best strategy for achieving many individuals’ goals. In a revocable living trust, you usually serve as the initial Trustee or, you and your spouse serve as initial Co-Trustees, and then you name Successor Trustees. Your Successor Trustee will be responsible for making sure your assets are passed on and managed according to your wishes after your incapacity or death. Like each of the following individuals involved in your estate planning, it’s best to have a trusted person or financial institution carry out this vitally important role.

It’s just as important to make the language in your Trusts as clear as possible so that your Trustee knows exactly how to handle various situations that can arise is asset management and distribution. Lastly, your Trustee will only control the assets contained within the Trust — not the rest of your estate. This is another reason that proper funding of your living Trust is vitally important.

Powers of Attorney

Your power of attorney is another vital document in your estate plan that appoints individuals, known as Agents, to make decisions on your behalf if you become unable to do so yourself. There are a few different types of powers of

attorney, each with their own specific provisions, but the general power of attorney in Florida is what's known as a Durable Power of Attorney. What this means is that the powers granted to the Agent on your behalf does not end or require judicial intervention in the event you become incapacitated. This cuts down on time waiting for a court case to be heard and provides for some level of privacy not offered in court proceedings.

Durable Power of Attorney

This document grants your Agent the ability to step into your shoes to manage any financial or legal affairs. This could include purchasing life insurance, withdrawing money from your accounts to cover your expenses, filing a lawsuit on your behalf, or assisting in filing for Medicaid and other long-term care programs.

The people you name should be people you trust. Other factors to consider include their ability to handle finances, experience with investments or professional training, and where they live among other factors. You do not have to name your oldest child, you don't even have to pick a family member. You can choose a close friend or even hire an institution like a Trust company.

Designation of Health Care Surrogate (aka- Health Care Power of Attorney)

A Designation of Health Care Surrogate (aka- Health Care Power of Attorney) grants your Surrogate the ability to make decisions related to your health care when you are not able to communicate your wishes. This role does not grant any authority to handle financial or legal issues and has no rights to manage your assets. It's for your health care related issues only. This document is different from a Living Will which advises what you want to happen if you're in a terminal or vegetative state. However, your Surrogate should abide by what your Living Will directs.

While the people you name as Surrogate should also be people you trust, this role requires someone who listens to you and feels comfortable talking about potentially uncomfortable topics. Things to consider in who you select may include whether they have a medical background, where they live and their access to you, whether they can make difficult decisions based on your written wishes, and their ability to be an advocate. In other words, it's not recommended that you select your neighbor who has a fear of hospitals and faints at the sight of blood... But you can pick anyone you desire. Again, it does not have to be a family member and if you either don't have someone local or someone who can serve in this role, there are Care Managers that can be retained.

Personal Representative

Your Personal Representative is the person who will see your assets through probate if necessary and carry out your wishes based on your Last Will and Testament. Other states may call this an Executor or Administrator, but they all have similar responsibilities. Depending on your preferences and estate plan design, this may be the same person or institution as your Trustee.

The requirements to be a Personal Representative in Florida are: (1) the individual must be at least 18yrs old, (2) cannot be a felon, and (3) must reside in the state of Florida or be blood relation if outside of Florida. Outside of the statutory requirements, you should consider the complexity of your estate (will there be a number of beneficiaries or do you have a lot of assets?), how much time the people you're considering have to handle your estate, and whether you feel they will follow your wishes after you're gone.

Being a Personal Representative can be hard work and will likely have court-ordered deadlines, so it's crucial to pick someone you know will be up for the job. In Florida, they will be required to retain a Probate attorney to handle the legal filings. They may also need to hire a CPA to help sort out your taxes. While it's common to name a spouse or someone else intimately involved in your life, you should also keep in mind that your loved ones are grieving and may not be up to the task at the time.

Let us help you make the process of picking your Trustee, Agents, Health Care Surrogates, and Personal Representative as smooth and headache-free as possible. Once you have these choices in place, you'll be able to rest easy knowing that your estate plan is in good hands no matter what life brings. Give us a call to schedule your appointment today.