



Fiduciary Roles in Your Estate Plan

Delegating Authority With Confidence and Clarity

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Naming the fiduciaries to serve in your trust, will, power of attorney, and health care directive documents is one of the most important decisions in an estate plan. Each of these appointees has a legal duty to act in your best interests, but they manage different parts of your estate and are activated by different legal documents. It is important to understand the roles and responsibilities of each.

Who Is a Successor Trustee?

A successor trustee is the individual or institution that you nominate in your trust.

In a **revocable trust**, the successor trustee takes over for you when you are unable to serve due to incapacity or death. You are typically the initial trustee of your own revocable trust. If you have a joint revocable trust, you and your spouse are usually the initial co-trustees.

In an **irrevocable trust**, the trustee steps into their role immediately upon the creation of the trust. They are responsible for the day-to-day administration of the trust, which includes making distributions, providing accountings to the beneficiaries, and working with any hired professionals to manage the underlying assets.

In a revocable trust, the successor trustee's importance is twofold:

Incapacity Planning in a Revocable Trust

If you become incapacitated (due to illness, accident, or cognitive decline), your successor trustee can immediately and privately step in to manage the assets held in the trust, pay your bills, and handle your financial affairs for your benefit while you are still alive.

Without a successor trustee, your loved ones would need to seek court approval to appoint a conservator or guardian to manage your assets while you are incapacitated. While these duties can be managed by a power of attorney (discussed below), a successor trustee typically provides a more seamless transition under such circumstances.

Estate planning isn't just about documents. It's about choosing the right people to carry out your intentions.

Trust Administration at Death in a Revocable Trust

Upon your death, the successor trustee is responsible for administering your trust, which involves gathering your assets, obtaining valuations for such assets, identifying your beneficiaries, and distributing your assets to such beneficiaries. Oftentimes, the successor trustee may also be responsible for administering a trust for one or more of your children after you pass away.

Who Is an Executor?

Your executor is the individual or institution you name in your Last Will and Testament. If you have a revocable trust, your executor will be the same individual or institution that you nominated as successor trustee.

Unlike your successor trustee, your executor's role begins only after you die. They are responsible for administering your will, which typically involves probate. Probate is the formal court-supervised process of validating the will, gathering your assets, paying your final debts and taxes, and legally distributing your remaining assets to your named beneficiaries.

Who Is an Attorney-in-Fact?

Your attorney-in-fact is the individual you name in your Power of Attorney. If you have a trust and/or a will, your attorney-in-fact should be the same individual that you nominated as successor trustee and executor.

Unlike your successor trustee and executor, your attorney-in-fact's authority is only valid during your lifetime and ceases to exist the moment you die. Their responsibility is to manage the assets that are outside of your trust during any period of time when you are incapacitated. Such assets may include retirement accounts, Social Security or pension benefits, and any real estate, bank, or brokerage accounts held outside of the trust.

A power of attorney can be effective immediately or "spring" into effect only upon your incapacity. Whether you utilize an immediate or springing appointment will depend on your circumstances.

Who Is a Health Care Agent?

Your health care agent is the individual you name in your Health Care Directive. While this individual is oftentimes the same person you designate in your trust, will, and power of attorney, it does not have to be.

Similar to your attorney-in-fact, your health care agent's authority is only valid during your lifetime. When you are unable to communicate your own wishes, your agent has the authority to make medical decisions for you. This includes accessing your medical records, consenting to or refusing treatment, and carrying out your wishes regarding life support.

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As BakerAvenue's Director of Estate Planning, Simon Mayali works with clients to identify their estate planning goals and options and helps them understand the complexities of estate and gift taxation. He began his career as an attorney in Chicago, where he developed a passion for helping clients plan for the future and navigate the intricacies of estate administration. He later obtained his LL.M in taxation with a focus on estate planning in order to work with clients on complex estate and gift tax issues.

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