

'Tis the Season to Lend a Helping Hand

During the holiday season, platitudes abound about the importance of giving and helping others.

We know there is truth to sayings such as “it’s better to give than to receive” because we know how it feels to find the perfect gift for someone and watch them unwrap it. The idea that giving makes us feel better is also backed by science, which identifies the emotional and psychological benefits of generosity.

Simple acts of kindness may be a proven happiness hack. But if a client is suddenly thrust into a role—such as a caregiver, an agent under a power of attorney, or a trustee—that requires them to put another person’s needs before their own, platitudes alone will not suffice. They may need professional guidance to help them manage or wind up a loved one’s affairs.

Caregiving and Estate Planning Roles a Client Might Face

The holidays serve as a reminder of how quickly life happens. It can also feel this way when we get the news that family is counting on us—and not just to bring the rolls to this year’s holiday dinner.

Perhaps a client finds out that their mother’s health has deteriorated and she needs somebody to take care of her or their father has passed. They might have known this day was coming. However, now that it is here, your client may feel unprepared and unsure of what to do next, especially if they have been put in any of the following positions:

- **Agent or attorney-in-fact.** An *agent* (also referred to as an *attorney-in-fact*) under a power of attorney has the legal authority to act on another person’s behalf to handle their financial or medical matters, depending on which powers are granted under the power of attorney.
- **Trustee of a trust.** A *trustee* manages a trust for the benefit of the trust’s beneficiaries.
- **Estate executor.** An *estate executor* (also called a *personal representative*) is appointed to administer and settle a deceased person’s estate in probate court according to their estate plan (or state law if they have not created an estate plan).
- **Caregiver.** A *caregiver* assists with the daily activities of an elderly or disabled person.

These roles have their own set of duties and responsibilities. However, they have one thing in common: the person chosen to serve may not be fully prepared—even if their background makes them a good fit.

A daughter may be an emergency room nurse, but Mom’s dementia presents entirely different challenges (perhaps medically and emotionally) from what she is accustomed to dealing with. A son may work in finance, but that does not mean he knows how to properly oversee a trust.

Family members may be willing to help and may have been given the legal authority to act. But that does not mean they have the experience and knowledge necessary to do what is asked of them without encountering substantial difficulty. In these situations, how can they ensure that they are doing not only what is best for the family but also what might be legally required of them? Who helps the helpers?

Where Clients Can Turn for Assistance

Working-age Americans put in an average of 45 hours per week of both paid and unpaid labor.¹ The exact number is based on gender and individual circumstances.²

Many of us struggle to find the time for our own personal affairs. Finding extra time to serve as a caregiver or fiduciary, especially during busy periods like the holidays, can be overwhelming.

A client also faces time-consuming legal requirements when serving as a healthcare agent, attorney-in-fact, executor, or trustee. A person legally responsible for making decisions for others is held to a high degree of accountability. It may be a family affair, but beneficiaries and heirs have rights, including the right to sue an executor or trustee they believe is not acting in the best interests of the person they are acting on behalf of or in their own interests in the event of death.

Family conflicts surrounding end-of-life decision-making should be expected. These difficult situations do not always bring out the best in people. They can often bring out the worst and exacerbate existing tensions.

If you have a client who is uncertain about navigating the role they have been given, they should know that help is available and where to find it.

- An *accountant* can advise them on tax matters, such as providing the court with an inventory of the estate's assets and filing all necessary tax returns and accountings for the deceased.
- A *financial advisor* can provide guidance about investing and managing trust assets.
- *Home healthcare providers* can assist with skilled and nonskilled care of an older adult.
- An *attorney* can help clients understand their fiduciary duties and perform their tasks as agents, trustees, or executors.

In some cases, it may take a group of professionals working together to provide the appropriate amount of assistance. Consider an aging parent who requires long-term care, a Medicaid spend-down, and related asset protection—a situation that involves medical, financial, and legal planning.

We Can Team Up Year-Round

The holidays come only once a year. However, clients count on our advice no matter the season.

You could get a call out of the blue from a client asking how to approach an unexpected and highly charged family matter. Despite having the best intentions, they may be unsure how to proceed. They want to do right by their loved ones while also protecting themselves. What should they do?

We became advisors because we value helping others. Sometimes, helpers need helpers, and the professionals assisting the helpers might need help, too.

¹ *Chapter 6, Time in Work and Leisure, Patterns by Gender and Family Structure*, Pew Rsch. Ctr., (Mar. 14, 2013), <https://www.pewresearch.org/social-trends/2013/03/14/chapter-6-time-in-work-and-leisure-patterns-by-gender-and-family-structure/>.

² *Id.*

In this giving season, we should remember that it is okay to ask for help. That goes for us as much as for our clients. Working together, we may be better able to solve problems and expand our offerings. If you need attorney advice about a client matter, please reach out.