

The Hidden Burden: What Executors, Trustees, and Agents Really Face

An 80-year-old widower relied on his adult daughter for help with daily life and finances for more than a decade. During that time, she managed his finances under a valid financial power of attorney, handling savings, his pension income, and proceeds from the sale of his home. What started as routine assistance gradually became full financial responsibility. She did her best to juggle her own obligations while helping her father, even though she did not always have the time or systems in place to track every transaction.

After the father's death, his son, who was the appointed executor of the estate, sued his sister for breach of fiduciary duty. The court ordered her to reimburse the estate more than \$15,000, plus \$35,000 in attorney's fees, with additional fees awarded on appeal.

This unfortunate outcome was not about obvious wrongdoing but about what can happen when the court treats an informal caregiving arrangement as a formal legal role. When records are incomplete and money is not kept separate, even well-meaning choices can later be hard to explain or prove, especially after someone dies and family emotions run high. The takeaway is simple: such roles require clear boundaries, good documentation, and a basic system so a caregiver does not end up facing legal trouble for trying to help.

More Than a Formality: The Responsibilities and Risks of Serving as a Fiduciary

The anecdote above is drawn from an actual case discussed by the American Bar Association¹ and illustrates the significant cost that can result when a family member unintentionally steps into a fiduciary role without fully understanding what it entails.

Your clients may understand that you are a fiduciary and that, as such, you are legally required to put their interests ahead of your own. They may even know that, if you fail to do so and financial harm results, legal action could follow.

What they often fail to realize is that the fiduciaries named in their estate plan are held to the same high legal standard.

When fiduciaries are unprepared, family relationships can fracture, accusations of mismanagement can arise, and loved ones may end up in court. The fiduciary pathway is often strewn with legal landmines triggered by inexperience as easily as by misconduct.

Appointment as a fiduciary can feel like an honor until the individual understands the true scope of the responsibilities involved. After the role has been accepted, neither a lack of understanding of its requirements nor the absence of guidance from the person who made the appointment is likely to excuse a failure to meet the applicable legal standard.

Advisors are often the first person a family calls when conflict or confusion arises surrounding fiduciary responsibilities. By then, it may be too late to replace a fiduciary without costly, complex court intervention. That is why it is critical for clients and their chosen fiduciaries to understand now what these roles entail, while substitutions can still be made and education can still take place before costly mistakes derail an estate plan.

¹ Katherine C. Pearson, *Perils of Serving as a Financial Caregiver*, ABA (Jan. 1, 2018), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol--39/issue-3--february-2018-/financialcaregiver.

Know Your Role: Fiduciary Duties and When a Professional Makes Sense

The overview below provides a concise, client-friendly explanation of what agents, executors, and trustees are expected to do and when a professional fiduciary may be a better fit.

Agent Under a Power of Attorney

- **The role:** Authorized to manage another person's financial affairs during life, typically with broad discretion over banking, investments, real estate, and bill payment
- **What can go wrong:** Records are incomplete, the boundary between personal and client funds becomes blurred, family members disagree, or decisions are later challenged under fiduciary standards—often after incapacity or death
- **What it could cost:** Personal liability, required repayment to the estate, significant legal fees, and costly court involvement
- **When a professional may make sense:** When finances are complex, caregiving is intensive, or family dynamics increase scrutiny

Executor or Personal Representative

- **The role:** Responsible for administering an estate after death, including gathering assets, paying debts and taxes, and distributing property according to the estate plan and applicable law
- **What can go wrong:** Delays, documentation gaps, disputes among beneficiaries, or perceived favoritism can trigger challenges, formal objections, or allegations of breach of fiduciary duty
- **What it could cost:** Personal liability, surcharge claims, removal by the court, legal fees, prolonged probate, and erosion of estate value through conflict and delay
- **When a professional may make sense:** When estates are complex, beneficiaries conflict, or neutrality and continuity are critical

Trustee

- **The role:** Responsible for managing and distributing trust assets according to the trust terms, often over many years and sometimes even across generations
- **What can go wrong:** Misinterpretation of trust provisions, inconsistent distributions, poor documentation, or beneficiary dissatisfaction can lead to disputes, formal demands for accounting, or litigation
- **What it could cost:** Personal liability, removal as trustee, surcharge claims, legal fees, and significant depletion of trust assets from prolonged conflict
- **When a professional may make sense:** When trusts are long-term, discretionary, or likely to attract scrutiny

Clients should also understand that fiduciary service carries more than legal duties and potential personal liability. Fiduciaries often devote hundreds of hours of personal time—sometimes over months or even years—and may be forced to make consequential decisions while grieving. That combination can strain judgment, increase stress, and heighten the risk of missteps.

Remind clients that, while professional fiduciaries do involve out-of-pocket costs (typically in the range of 1–2 percent of assets), that expense can be modest compared with the financial and emotional toll of delays, disputes, litigation, or court intervention, and may ultimately preserve more value for the estate.

Advisor as Educator: How to Support Clients in Their Fiduciary Choices

Advisors can take the conversation a step further by helping clients move beyond simply naming fiduciaries to assessing whether those individuals can realistically handle the role. That includes

- assessing (before signing documents) a fiduciary's time availability, organizational ability, and ability to remain objective under pressure;
- ensuring that the fiduciary has been told what is, or will be, expected of them and that they know where key information is located;
- educating clients on the tradeoffs between individual fiduciaries, private professionals (such as a CPA or professional trustee), and corporate fiduciaries, including balancing cost, continuity, neutrality, and administrative capacity against family dynamics and complexity; and
- suggesting compensation even to loved ones serving as fiduciaries to "professionalize" the role.

To move from discussions to planning, advisors can offer tools such as

- a "fiduciary folder" that helps clients organize their list of assets and key contacts in a single place;
- a guide designed for specific fiduciaries (e.g., "You've Been Named Trustee—Now What?"); or
- a fiduciary organizational meeting to clarify and outline responsibilities before the role is ever activated.

If you are looking for more ways to guide clients through fiduciary planning, we are happy to help.