

## The Hidden Burden: What It Really Means to be an Executor, Trustee, or Agent under a Power of Attorney

An 80-year-old widower relied on his adult daughter for help with his 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, pension income, and proceeds from the sale of his home. What began as routine assistance gradually became full financial responsibility.

After the father's death, one of his sons—appointed executor of the estate—sued his sister for breach of fiduciary duty. The court ordered the sister to reimburse the estate more than \$15,000, plus \$35,000 in attorney's fees.<sup>1</sup>

The issue was not abuse or bad intent. The father was, by all accounts, loved and well cared for. Rather, it came down to process. Incomplete records and the failure to keep funds fully separate turned well-meaning decisions into costly legal exposure.

This example is not hypothetical but a real case discussed by the American Bar Association,<sup>2</sup> and it illustrates what can happen when someone steps into a fiduciary role without fully understanding what it entails.

The people you choose for these roles could face similar consequences if they are not properly prepared, and part of that preparation falls on you.

### More Than a Formality: Why These Roles Carry Real Risk

You may be familiar with fiduciaries in professional settings. A *fiduciary* is someone legally required to put another person's interests ahead of their own. Your lawyer is a fiduciary. So are your accountant and other financial advisors.

What you may not know is that the people you name in your estate plan are held to the same legal standard.

Executors, trustees, and agents under powers of attorney are all fiduciaries. If they make mistakes, fail to keep proper records, or blur financial boundaries—even unintentionally—the consequences may include personal liability, family conflict, and court involvement.

When fiduciaries are unprepared, relationships can fracture, accusations of mismanagement can arise, and judges may need to step in. In an estate planning context, many fiduciary problems arise from inexperience and lack of guidance rather than from misconduct. The fiduciaries you name may have full-fledged professional responsibilities but lack professional background and training.

Being named to one of these roles can feel like an honor until the scope of responsibility becomes clear. And not knowing what the role requires is **not** a legal defense.

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<sup>1</sup> 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](https://www.americanbar.org/groups/law_aging/publications/bifocal/vol--39/issue-3--february-2018-/financialcaregiver).

<sup>2</sup> *Id.*

That is why it is important to understand these roles now, while you still have the ability to choose carefully, prepare the right people, and adjust your plan before avoidable oversights put your fiduciaries—and possibly your estate, finances, or health—at risk.

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

Being named a fiduciary is more than an honorific. It is a serious responsibility that, without support, can become an unworkable burden.

In some cases, hiring a professional makes more sense than relying solely on family or friends. Even when you choose someone familiar, that person should have access to a professional support team, such as your attorney, certified public accountant, or financial advisor, to help navigate the technical and legal aspects of the role.

Below is a plain-English overview of what each role involves, what can go wrong, and how professional support can help.

#### ***Agent Under a Power of Attorney***

- **The role:** Authorized to manage your finances during your lifetime, including banking, investments, bill payment, and real estate transactions
- **What can go wrong:** Poor recordkeeping, informal reimbursements, or family disputes, often after your incapacity or death
- **What it can cost:** Required repayment, personal liability, legal fees, and court proceedings
- **How a professional can help:** A professional agent or co-agent can provide structure, documentation, and neutrality when finances or family dynamics are complex

#### ***Executor (or Personal Representative)***

- **The role:** Settles your estate after death by gathering assets, paying debts and taxes, and distributing property according to your plan and the law
- **What can go wrong:** Delays, disputes, or perceived favoritism that trigger objections or claims of fiduciary breach
- **What it can cost:** Personal liability, removal by the court, legal fees, prolonged probate, and erosion of estate value
- **How a professional can help:** A professional executor or coexecutor can reduce friction and keep administration on track when complexity or conflict is likely

#### ***Trustee***

- **The role:** Manages and distributes trust assets according to the trust's terms, often for many years
- **What can go wrong:** Misinterpretation of trust provisions, inconsistent distributions, or poor accounting
- **What it can cost:** Personal liability, removal, surcharge claims, legal fees, and depletion of trust assets

- **How a professional can help:** A professional trustee can provide technical expertise, consistency, and emotional neutrality

### **The Hidden Cost That Most People Miss**

Beyond legal exposure, fiduciaries often give up hundreds of hours of personal time and may need to make major decisions while grieving, which can cloud judgment and increase risk.

Professional fiduciaries do involve out-of-pocket costs—typically 1–2 percent of assets—but those costs are often modest compared with the costs of delays, disputes, litigation, or court intervention. In many cases, professional support preserves more value than it costs.

Another option is compensating family fiduciaries at a similar rate, recognizing the role as the serious responsibility it is.

### **Preparing and Supporting Your Fiduciaries**

Think about your choice of fiduciaries the same way you would your future caregivers. It is about capacity every bit as much as, or more than, trust and familiarity.

Before finalizing your estate plan, ask yourself the following questions about your fiduciaries:

- Does this person have the time, organization, and emotional steadiness the role requires?
- Do they know they have been named to a specific fiduciary role (and what that means)?
- Have I made my expectations clear to them?
- Do they know where my documents, records, and key contacts' information are located?
- What happens if they cannot or should not serve when the time comes?

During the planning process, we can help you move beyond discussions to practical actions that include not only naming the right fiduciaries but also

- helping you organize assets and key contacts' information in a single location;
- designing a guide for specific fiduciaries; and
- having a fiduciary walk-through meeting with you and them to clarify responsibilities before the role becomes active.

Being a fiduciary is a significant burden, but it is not one that fiduciaries must face alone. We are here to help.