

It helps to have a trustworthy advocate in your corner

You often see the terms Agent, Trustee, and Executor in various legal documents. Each of these appointments allows for someone to care for your financial household in the event you are unable to act and upon your passing. But, what is the difference between these three roles, and why does it matter who you appoint to each role?

The role of your agent

Under both your Power of Attorney for Health Care and Power of Attorney for Property, you (the creator of the Power of Attorney) are the “principal,” while the person you appoint to act on your behalf is the “agent.” Typically, this power to act on your behalf becomes effective upon your incapacity and will terminate upon your death.

When considering who to appoint to this position, it may be advisable to name a different individual to act as Power of Attorney for Health Care than for Property. The roles and responsibilities are very different. Asking these questions may help you with your decision:

- Is the person you would like to have in charge of your health care decisions and the person you would trust to manage your household expenses and other financial affairs the same person? Your health care agent has the power in some instances to make life and death decisions. Your property agent will have the ability to manage your financial household and make distribution decisions.
- Does your agent(s) live nearby?
- Do they have your best interest at heart?
- Do they know and understand your wishes?

For both, trust is imperative. Ensure that the person(s) named is(are) aware of this appointment and that they are comfortable working in this capacity.

The role of your trustee

Similarly, choosing a trustee is not always a simple task. Within the governing instrument of your trust, you (the creator of the trust) are considered the “grantor.” The “trustee” is the person or third party designated to control and carry out the terms of the trust.

The time at which the trustee will act is dependent on the governing instrument. Typically, for an individual’s living/revocable trust, the grantor will act as trustee during their lifetime or as long as they are able to do so. If the initial trustee is no longer able to act, resigns, or passes, then the successor trustee named assumes this role, if able and willing.

A trustee will control the assets titled in the name of the respective trust. This role is not to be taken lightly. Acting as a trustee is a personal responsibility and legal obligation. The duties are extensive and can require comprehensive expertise and experience. The trustee has an obligation to treat all the beneficiaries equally, which may be difficult if the named trustee is a family member or close friend. For some, it may be best to consider naming a third party or corporate trustee. A third party would have the capacity to act in an unbiased manner and may have better resources available to administer the trust appropriately.

Before naming an individual as a trustee, consider the following:

- If the named individual needs to make a decision that would affect the beneficiaries or other family members, would this person act in a fair and unbiased manner?
- Will naming the individual create issues among the beneficiaries?
- Does the individual have the time to act in this capacity?

Another element of naming a trustee is to provide for flexibility. Allowing for the removal and/or appointment of additional or successor trustees may be recommended depending on the situation, dynamics of your family, and the beneficiaries’ circumstances.

The role of your executor

Under your “Last Will and Testament,” you (the creator of the Will), are considered the “testator.” Under this legal document an

“executor” is also named. Like a trustee, an executor has a legal obligation to carry out the terms of the document in the best interests of the parties involved. The task at hand can be overwhelming. The named executor acts upon your passing. To put it simply, the executor handles all of the matters after a person’s death, specifically, inventorying all of the assets, obtaining appraisals of property, and most of the time delegating and hiring counsel to provide guidance. Unlike a trustee’s role, which can last for many years (until the termination of the trust), an executor’s role will end once the estate is settled.

Professionals, such as the family’s estate planning attorney, accountant, and financial advisor can help to collaborate and deal with many of the items, including completion of necessary tax filings, dealing with the decedent’s creditors, and safeguarding the assets. For consistency, consider naming the same parties to act as trustee and executor. The executor, like the trustee, should have regular communication with the family. It is important to choose someone who will be able to carry out these tasks pursuant to the governing instrument.

Before executing your estate plan, consider who would be the right party to act on your behalf.

- Do they have your best interest at heart?
- Can they handle their own affairs and yours?
- Is your plan too complex for this individual?
- Should you consider naming a third party or corporate trustee?

When executing estate planning documents or reviewing already existing plans, your attorney and other advisors may have guidance to provide when considering who or what an appropriate solution may be for you and your family.

As wealth advisors, we work with individuals and families, in conjunction with their other professional advisors, to ensure that clients consider these types of safeguards to help protect them and their assets. Please contact your Mesirow wealth advisor to review your existing plans or to discuss potential options.

Published March 2024

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