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Who Should Serve As My Fiduciary?

In general, a fiduciary is a person who has the power and obligation to act for another's benefit. Fiduciaries include: an Executor named in a will, a Trustee, an Attorney-In-Fact under a power of attorney, and a Guardian of property.

Since your fiduciary will be responsible to carry out various and sometimes critical duties, depending on the document under which he or she derives authority (for example, in the case of an executor, collecting, valuing, protecting and, liquidating assets, paying bills, taxes and expenses, distributing assets and income), it is important to select the right person.

A fiduciary can be any person who is not an infant, incompetent, non-domiciliary alien, convicted felon, or is unable to fulfill their duties because of substance abuse, dishonesty, recklessness or want of understanding. Select someone who is trustworthy, responsible, diligent, and willing to dedicate the time necessary to do a good job. In the best of circumstances, a fiduciary should be impartial, free of conflicts of interest and able to command the respect of your beneficiaries. While your fiduciary will be responsible for exercising care and judgment in carrying out your wishes, he or she need not have particular skills or training as professionals may be hired to handle the legal, tax, financial or other specialized requirements.

Often, our clients will designate a spouse or adult child to serve in a position of trust. Most of us believe that those with whom we are closest are more likely to know and understand how we make decisions and, for this reason, make the same decisions. Other family members, friends, business associates and professional advisers, such as accountants, attorneys or financial advisers with whom we have had long standing relations, may also be good candidates. Financial institutions, such as banks and trust companies, will also agree to serve as executors and trustees in the right circumstances.

An individual who serves as your fiduciary may have greater sensitivity to the family issues at stake and may be more approachable and responsive to your needs and/or those of your beneficiaries. The advantages of a corporate fiduciary, on the other hand, are experience, expertise, permanence and impartiality. A corporate fiduciary is less likely to be influenced by pressure from beneficiaries. The selection of a corporate fiduciary may prevent “bad blood” caused by appointing one family member over another.

You may choose more than one fiduciary, but appointing more than two is not generally advisable as it may lead to complications and disputes. Having two fiduciaries may offer “the best of both worlds.” You could combine the responsiveness and sensitivity of an individual with the permanence and professionalism of an institution. Co-fiduciaries might serve jointly, or have separately defined duties and functions. For instance, one may focus on investing, record keeping and accounting, while the other makes more personal decisions.

To some of us, choosing our successors - those who will step into the decision-making role when we no longer can - is easy. To others, the task of selecting the right fiduciary requires careful consideration and reflection. Please call on our services to assist you. Often, discussing your concerns with your legal advisor will clarify the issues and signal the solution.