

When to Use a Professional Fiduciary: A Case Study

The scenario typically goes something like this: you're at a family gathering. Everyone is there and in great spirits. Sometime after dessert and before the good-byes, you pull your daughter aside and ask her if she would be willing to be the executor of your Will. After all, she's been the responsible one, finished her degree in business, and has a good job and a nice little family of her own. She would be perfect for the job of closing your estate when you pass away, because she so clearly has her act together. In turn, your daughter accepts your request without hesitation, saying that she is honored to serve in this important capacity for you. You exchange a hug and words of thanks, your lawyer drafts the document with her name inserted, and your lives go on.

Then, one day, you pass away. Your daughter gets a phone call informing her of things she needs to do as the personal representative of your estate. She will be advised of her responsibilities, which include paying your outstanding debts, filing a final tax return, and distributing the proceeds of your estate in the manner you had specified in your will. She will need to open a bank account, possibly sell your residences, liquidate your investment portfolio, sell your personal effects (those that have not already been distributed as-is to your survivors) and make many other arrangements in pursuit of maximizing the value of your affairs as they are passed to your beneficiaries. She will field dozens of phone calls from attorneys, realtors, brokers, and - long lost relatives. She will be asked - many times - when she will be cutting checks, and how big they will be. If she has siblings, her relationship with them is going to change, probably in some not so favorable ways. And, through all of this, she will bear the constant reminder of her grief in losing you.

Hopefully, she will be advised to keep track of her time, because she is going to spend a lot more of it on probating your estate than she could have imagined. She's going to be doing tasks that she has never done before, and most likely will never do again. There will be additional stress, and especially so precisely because of why you chose her to begin with. She's the responsible one - with the career and family - who have now grown to demand even more from her than they did when you asked her to do this job at that family gathering. She will sleep less, work more, and feel guilty for the mix of sadness and annoyance she's feeling about this job that she was honored to do for you that has now become so thankless.

An alternative to this scenario goes something like this: you hire a professional fiduciary to be named in your will as your personal representative. When you pass away, the fiduciary steps forward with its team and gets to work. Those people have no emotional connection to you, so they are not burdened by sadness nor slowed down by siblings. They use their smarts and experience to work efficiently, knowing

what the priorities are and the actions that will save time. They can anticipate the next moves in the process, and – in the end – save your estate a lot of money and your daughter a lot of heartache.

The relationship between your attorney and a professional fiduciary is analogous to that of an architect and a general contractor. An architect draws up fabulous plans for your dream home on the lake, but does he give them to your daughter with the expectation that she will know how to file for the building permits, pour the foundation, do the framing, wiring, landscaping, and everything else in a reasonable amount of time to let you live in it? Instead the architect gives those drawings to your general contractor whose experience on construction sites makes the completion of that lake home timely and efficient.

By choosing a professional fiduciary as the Attorney-in-Fact in your Durable Powers of Attorney, as your Personal Representative in your Will, and as Trustee of the education, special needs, or other trusts that you plan to set up, you will accomplish many things: you will gain the peace of mind that comes from knowing that you've chosen the right people to get a big job done well, and, you will be giving the gift of peace of mind to the daughter you were going to ask, right after dessert and before the good-byes.

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