



Pathfinders in Elder Law



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Do You Have the Right Fiduciary?

The recently When creating an estate plan, an important decision is who to name as your fiduciary. A fiduciary is a fancy legal term for the person who will take care of your property for you if you are unable to do it yourself, such as the executor of an estate, the trustee of a trust, or an attorney-in-fact under a power of attorney. Your first instinct might be to name one of your children as a fiduciary, but if you want to avoid conflict among your children, this might not be the best option.

When naming a fiduciary, it is important to be able to trust the individual, which is why people often name family members as fiduciaries. However problems can arise when a parent with two or more children names one child as a fiduciary. According to Tim O'Sullivan, an attorney from Wichita, Kansas, who spoke on the issue of family harmony at a recent conference for elder law attorneys, a child is often not the best fiduciary for several reasons:

- It is hard for a child to be completely objective.
- Children often disagree over many things, including how long the estate should take to complete,

the selling of assets, and the division of personal property.

- Children often don't communicate with each other well.

O'Sullivan says that, in his experience, when one child is named as fiduciary problems arise between family members about one-quarter to one-third of the time.

An alternative is to hire a professional fiduciary. A professional fiduciary can be a bank with trust powers, a certified public accountant, or a trust company. The attorney who is drafting your estate planning documents can recommend a good one in your area. A professional fiduciary will charge a fee, but the fee should be explained ahead of time. In addition, because a professional is experienced in managing money and property, your assets are more likely to increase under this person's or institution's guidance.

To ensure that your family has some input, you can include a provision that allows one or more family members to discharge the fiduciary if they feel the professional is not doing a good job. This will allow your family to make sure the fiduciary is performing properly without having the burden of acting as fiduciary.

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An attorney can help you make sure you have the right fiduciary for your family. 🏠

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