

OCTOBER 2007



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## Selecting a Fiduciary

CHOOSING A CAPABLE FIDUCIARY IS A VITAL PART OF ESTATE PLANNING, AND SELECTING ONE WHO WILL MAINTAIN SMOOTH RELATIONSHIPS WITH YOUR FAMILY WILL EASE THE PROCESS OF MANAGING YOUR ESTATE.

**B**uilding a fiduciary team that has the bright skills and qualities to manage an estate and support legacy intentions requires careful planning. Helping your clients assemble the best group for their needs can instill confidence that their estate plans will be carried out properly. As individuals or institutions who act on behalf of others, fiduciaries can serve different functions, depending on their expertise—including estate executor, power of attorney for finances or medical care, and trustee and/or child guardian.

### TYPES OF FIDUCIARIES

“When planning who will fill various fiduciary roles, be certain to include a list of alternate fiduciaries in the event that someone declines, moves away, becomes incapacitated or dies,” suggests Stuart Radar, partner with Radar and Coleman, estate planning attorneys serving high-net-worth families. Additionally, encourage the use of an attorney to draft a “removal clause,” to allow the beneficiaries to appoint a new fiduciary if needed.

To perform key fiduciary duties, the most important fiduciaries—the executor, the individual authorized with power of attorney, the trustee and the guardian—require select skills, personal knowledge of the client’s values and goals, and a commitment to serve in the capacity designated.

- **The executor** is responsible for collecting and protecting estate property, paying debts, filing tax returns, liquidating assets, accounting, facilitating the probate process, and ultimately distributing assets according to the will. These duties cease when all the details of the estate have been finalized.

- **The person entrusted with powers of attorney** would be authorized to make financial or medical decisions on behalf of the client during his or her lifetime. **The financial power of attorney** allows a person to manage your client’s finances, including paying bills and handling insurance and benefit paperwork. A financial power of attorney can be drafted to take effect as soon as it is signed, or only in the event that your client becomes incapacitated. **The medical power of attorney** allows a person to make medical decisions for your client if he or she becomes incapacitated based on the guidelines provided in a living will and previous discussions about treatment preferences.

- **The trustee** would be charged with the ongoing management of trust assets, including financial investment strategies, tax filings and making decisions about beneficiary distributions. A trustee may administer assets held in a trust for heirs during and after your client’s lifetime, depending on the type of trust constructed.

- **The guardian** would act on behalf of a minor child until the age of majority, or indefinitely if the person is incapacitated—in the event that both parents predecease their child or children. Guardians are trusted individuals who, ideally, know the children, are in good health, share the same values and have a stable means to support them. A guardian should be named through the will.

### SELECTING A FIDUCIARY

Depending on the complexity of an estate, the skills and resources needed to fulfill each fiduciary role may best be served by different entities. A

# Selecting a Fiduciary

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“Successful retirement planning creates enough cash flow to support an investor’s lifestyle, and real estate that leads to a cash conversion may be the right solution for an interested client.”

*Irving Diaz, managing director and licensed real estate broker with Irving J. Diaz & Associates, LLC, in Miami.*

client’s choices for fiduciaries include: (1) a trusted individual or professional, (2) co-fiduciaries, or (3) a corporate institution. Here are some things to consider for each:

•**Selecting trusted individuals.** Personal knowledge of family history and a client’s values may jeopardize relationships with the beneficiaries or create conflicts. For example, it may be difficult to remain impartial if heirs request discretionary funds from an estate. If a family member or a friend is appointed as trustee, providing a way for him or her to hire outside expertise to manage the

estate or trusts may make the process easier to manage.

•**Matching co-executors or co-trustees.** Co-fiduciaries could include a professional organization with oversight mechanisms (to assure the estate is managed as planned) and someone with a sensitivity to family dynamics. “Choosing two fiduciaries, one who can maintain a good relationship with heirs and a professional who has the expertise and objectivity necessary to facilitate your client’s estate planning goals, has advantages,” states Darlynn Morgan, of Morgan Law Group in Newport, Calif.

•**Choosing an institutional fiduciary.** If the estate is complex, it may require a knowledgeable investment entity to manage and protect the assets in order to achieve legacy goals. A corporate entity with relevant knowledge of applicable laws, accounting issues and investing should be considered. “Corporate trustees are able to make decisions with objectivity, while providing continuity over the duration of the trust,” says Morgan. A client should ask the following questions when interviewing an institution as a potential fiduciary, suggests Radar:

- What is the average retention rate for trust administrators? Trusteeship is a very personal service and a good retention period is between 5 to 10 years.
- How many relationships is each trust administrator assigned? The ideal case-

load size is between 70 and 100.

- What is the investment platform? Does your client want an in-house money manager, committee, outside money manager or the ability to retain the services of the current money manager?

Fiduciaries have an important role to play in protecting your client’s assets. In addition to helping your clients discuss fiduciaries in the context of their estate plan, you may want to encourage them to seek legal, tax and financial counsel before making these important assignments.

The information presented is not intended to be investment advice. It is important to seek the assistance of qualified experts to determine how owning real estate fits within a high-net-worth portfolio and financial strategy.

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