

## *Important Roles for Estate Planning*

### Executor

#### (sometimes referred to as Personal Representative)

High Level Description: person appointed in the Will who manages, protects and distributes estate assets after decedent's death.

#### Responsibilities:

- (1) Locate, take control of and protect decedent's assets.
- (2) Overall duty is to distribute assets in accordance with the Will.
- (3) Prior to actual distribution, Executor has a number of duties:
  - (a) File required accountings with probate court.
  - (b) Give notice to creditors; pay debts and claims against estate.
  - (c) Keep detailed records of assets received and debts, taxes and expenses paid.
  - (d) File final income tax returns for decedent for year of death.
  - (e) File income tax returns for the estate itself as an entity.
  - (f) File federal estate tax return if estate assets meet the filing threshold.
- (4) Executor most often hires experts to assist in these responsibilities (Attorney, CPA, appraisers).
- (5) Executor is entitled to be compensated for his or her work as Executor.

Duration: Executor's duties last for a shorter time period (1-3 years) than duties of a Trustee.

## Trustee

High Level Description: manages assets in a trust; the trust may be a trust created by a document signed during a person’s lifetime or one created under his or her Will.

What is a trust? A trust is a legal relationship created by a person (referred to as a “grantor” or “settlor”). Trustee is the person who manages the trust assets for the benefit of one or more other persons (“beneficiaries”).

### Responsibilities:

- (1) Responsibilities are established by the written trust document and by the laws of the state whose laws govern the trust.
- (2) Manage and invest the trust assets.
- (3) Make distributions to beneficiaries as directed by the trust document.
- (4) Keep detailed records of trust investments, expenses paid and distributions to beneficiaries.
- (5) File income tax returns for the trust.
- (6) Trustee most often hires experts to assist in these responsibilities (Attorney, CPA, appraisers).
- (7) Trustee is entitled to be compensated for his or her work as Trustee.

Duration: Trustee’s duties may last for many years; trusts often last until a beneficiary reaches a certain age or for the lifetime of a beneficiary.

### Special Duties of a Trustee:

- (1) **Loyalty**: Trustee cannot put his/her personal interest ahead of those of the beneficiaries.
- (2) **Impartiality**: cannot favor one trust beneficiary over another beneficiary.
- (3) **Prudence**: make good decisions with respect to the management of the trust.

(4) Confidentiality: cannot disclose information about the trust to third parties.

**Agent Under Durable Power of Attorney**  
**(sometimes referred to a “Attorney-in-Fact”)**

**High Level Description:** person named in Power of Attorney to make legal and financial decisions for you during periods when you are incapacitated.

**Very Broad Discretion:** Most often, the document grants broad powers to the Agent, giving the Agent extensive powers over all financial and business matters. Agent must be chosen very carefully.

**Duration:** Powers cease at death of person who appoints the Agent.

**Agent under Health Care Power of Attorney**

**High Level Description:** person named in Health Care Power of Attorney to make health care decisions when you are incapacitated.

**Very Broad Discretion:** Most often the document gives the Agent the power to make all of the health care decisions that you could make when not incapacitated, including life and death decisions regarding procedures, surgery, use of extraordinary life-prolonging measures, etc.

**Directions re Extraordinary Life-Prolonging Measures:** Most states allow you to give specific directions to your Health Care Agent regarding your wishes about the use of extraordinary life-prolonging measures.

**Duration:** Powers cease at death of person who appoints the Agent.

**Guardian of Minor Children**

Most states allow you to nominate a person to serve as guardian of your minor children if you die while a child is under 18 years of age. The guardian is charged with having control of and taking physical care of your minor child.

Guardian works closely with Trustee who most often holds assets for minor child’s support.