

# How Do People Choose Executors, Trustees and Agents?

When people get to the point where they've decided to prepare their wills, trusts and ancillary documents, i.e., a durable power of attorney for finances, medical power of attorney, declaration of guardian, directive to physicians and HIPAA release, there are a few different judgement calls that will typically surface when they make the choices of their various fiduciaries. Fiduciaries are persons who will serve in a position of authority pursuant to the document in which they have been named.

When people make decisions regarding who to name as a fiduciary, it is important that they understand the responsibilities of each fiduciary named under the various ancillary documents in order to ensure a suitable person is selected. In determining who to select as fiduciaries many people choose to name their firstborn child first followed by their other children in the order of age. They should also take into consideration the availability of the child in terms of geography. For example, you may not want to name a child in New Jersey first when you have a suitable child in Houston who is more accessible in terms of performing their fiduciary duties.

It is also important to consider the various skill sets belonging to the children. One child may be a nurse or a doctor. Another child may be an accountant or bookkeeper. Therefore, it would likely be a better option to name the child with medical skills to take care of positions involving medical care and the child who has skills dealing with numbers a position as an agent under a power of attorney.

Other things one may want to consider would be whether the person they are considering choosing for a position has a problem exercising good judgement, whether the person is honest or a substance abuser.

Then there will be consideration given for co-agents or co-executors. A couple will almost always name their spouse to serve in every position in each and every document unless there is something wrong with the spouse, e.g., the spouse doesn't have the capacity to serve or couldn't handle the job if named or wouldn't want to serve for whatever reason.

After the spouse is named, a parent will usually turn to the children for successors to be selected in case something happens to the spouse. Then they will consider making some of the executors and agents serve together with another child. If so, they will then need to decide whether to make them serve together in lockstep or independent of one another.

Most attorneys would agree that it is never a good idea to name co-agents in a medical power of attorney. What would happen if they get into a situation in which parent is in need of a treatment decision and they can't agree? What doctor would want to be the attending physician in that case?

*You may email your questions to [education@wrightabshire.com](mailto:education@wrightabshire.com) or visit our website at [www.wrightabshire.com](http://www.wrightabshire.com). Wesley E. Wright and Molly Dear Abshire are attorneys with the firm Wright Abshire, Attorneys, P.C., with offices in Bellaire, the Woodlands, and Carmine. Both Wright and Abshire are Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and are certified as Elder Law Attorneys by the National Elder Law Foundation. Nothing contained in this*

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