

The Roles of a Power of Attorney, Executor and Trustee Explained

Selecting an agent, executor or a trustee is a vital decision that effects you, your estate and your named beneficiaries. Many people get confused by the legalese defining each position and are not fully aware of what each role entails.

Not only is it important for you to know who you are selecting, but it is crucial for the person selected to understand his or her obligations over your estate.

The person you select as your agent under a power of attorney will become your fiduciary when this person steps into that role. Essentially, this gives the electee jurisdiction to act as you in financial and legal matters. Your agent will act as the owner of all assets in your name and therefore be required to maintain them. This will allow your agent to take on your responsibilities like writing checks to cover your mortgage, handling debt in your name or filing your income tax return.

In some cases, an individual will assume the role of agent under a power of attorney immediately upon the power of attorney being signed. Other powers of attorney will require a written statement from a physician declaring the principal to be incapacitated and no longer capable of managing his or her personal affairs before the agent can assume their role under the power of attorney.

Upon your death, the obligations of your power of attorney will terminate and the executor is usually next in line to handle your estate.

The assets inherited by the beneficiaries are meant to be received as gifts, which is why it is essential to have an executor marshal your estate prior to the allocation of your assets. An executor's fiduciary duty is to administer your assets in the best interest of the estate. Your appointed executor is the one who winds down your affairs, pays taxes and handles debts upon your death. The executor will tie up any loose ends of your estate, and distribute your assets to the beneficiaries in the manner designated by your Will.

A trustee is only elected if a trust is established either during your lifetime or at your death.

The power of a trustee should be outlined by the terms of your trust. The trustee will have full authority over all assets held inside the trust. Your trust can vary from a single asset to many assets. There is a wide range of authority your trustee may have over your trust estate.

Your trustee will have the same obligations over the assets in the trust as the agent under your power of attorney and executor do over assets held outside of your trust. The trustee is fully responsible for acting as fiduciary of your trust. Your trustee will not only handle the investments of your trust assets but also be responsible for making distributions to you and/or your beneficiaries.

It is important to recognize the obligation you are bestowing on your selected trusted individuals and the variations of their roles in order to elect the best candidate for each position. Without knowing the obligations of the persons you select you are at risk of hurting your estate and beneficiaries as well.

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