

## A Guide to Choosing the Right Fiduciaries

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### What Is a Fiduciary?

A fiduciary is an entity or a person who acts on behalf of another and who agrees to legal and ethical duties of good faith, loyalty and care, while avoiding conflicts of interest. An executor, administrator, guardian, trustee, and agent under a Power of Attorney ("POA") or Health Care Proxy ("HCP") are all examples of fiduciaries.

### Types of Fiduciaries

An executor or administrator of an estate is tasked with collecting and managing a decedent's assets, paying the debts or expenses of the decedent and estate, and making final distributions of assets to beneficiaries. An executor is nominated under a Last Will and Testament ("Will"), whereas an administrator is appointed under New York State statute where a decedent does not have a Will.

A trustee derives authority from an *inter vivos* trust or a testamentary trust created by a Will. A trustee must manage and invest trust assets, and make distributions to trust beneficiaries.

Documents such as POAs and HCPs create a principal-agent relationship that is effective during the principal's lifetime, unless revoked. The principal nominates agent(s) and grants those agent(s) specific powers and authority to act on behalf of the principal. An agent under a POA is authorized to execute financial transactions for the principal during the principal's lifetime. An agent under a HCP will make medical decisions on behalf of the principal when the principal cannot.

A legal guardian is a fiduciary appointed by either a Supreme Court or Surrogate's Court. Guardians may handle the personal affairs, property, or both, of an individual who is unable to manage property on his or her own, or care for himself or herself. A guardian might be appointed for a child under the age of 18, or a person of any age who has a disability or other reason to consent to a guardianship.

### Choosing Your Fiduciary

In selecting a fiduciary, considerations include the person's familial status or relationship, age, geographic location, financial literacy, and medical background. It may make sense to appoint an agent under your HCP who lives nearby or who has medical knowledge. Geographic proximity might be less important for an agent under a POA or an executor, but financial literacy should be an overriding consideration. The person's age should also be considered (i.e., the desire that your executor, trustee, or guardian outlive you).

A fiduciary should know your values and possess intangible qualities like trustworthiness, responsibility, and attention to detail. Trustworthiness should be a threshold question when choosing a fiduciary. Without trust, you cannot be sure that

your fiduciary will uphold his or her duty of loyalty to you or to your beneficiaries. Responsibility, reliability, and accountability are equally important qualities in fiduciaries. Financial acumen is a plus in these roles, but more important is having a fiduciary who will hire the right professionals, address matters quickly, and communicate with third parties and beneficiaries in making decisions. The ideal fiduciary is someone who will handle your affairs effectively and know when and where to seek help.

Once you have found your ideal fiduciary,

you must ensure they are up for the task. The most effective fiduciaries are those willing to fully commit themselves to your affairs.

### Conclusion

The need for a fiduciary can arise both during life and after death. Care must be taken to ensure that your fiduciary will act in your best interest at all times, in accordance with legal and ethical parameters. In addition to specific attributes, like financial or medical knowledge, a proposed fiduciary's trustworthiness, integrity, reliability, and

responsibility should be considered.

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