

What is a fiduciary and what do they do?

The term fiduciary includes personal representatives, executors, trustees, and agents under powers of attorney. A fiduciary is someone who holds or manages money or property for another person (the principal) with an obligation to be loyal and act in the best interest of the other person.

Personal Representative (old term is Executor/Executrix). A personal representative is nominated by the principal in a Last Will and appointed by the probate court. The personal representative's responsibilities do not start until after the death of the principal. Duties include filing the Last Will with the court and administering any property the decedent owned that is not otherwise directed to a beneficiary through, for example, a pay on death account designation, a joint account, a beneficiary designation or is held in a trust. The personal representative has the primary responsibility to file final tax returns, but if a personal representative is not appointed, the trustee may file the returns. In South Carolina the probate process takes around a year to complete and includes various filings and notices.

Trustee. A trustee is responsible for administering any property that is in the trust for which he is trustee and following the instructions given in the trust. For example, for a revocable or living trust, the trustee uses trust assets for the benefit of the trustmaker while the trustmaker is living, then follows the directions to distribute the trust principal outright to beneficiaries after the death of the trustmaker or to hold the remaining assets in further trust for a beneficiary. The trustee can serve both while the trustmaker is alive and after the trustmaker dies.

Agent. An agent is appointed by the principal to conduct business for the principal. The document appointing the agent is called a power of attorney. Generally, the intention is for the agent to be able to act if the principal is unavailable due to travel or when the principal is incapacitated, but often as the principal ages and capacity and energy decline but are not gone, the agent may step in. If there is a trust in place, the agent would handle matters outside the trust such as litigation, retirement accounts, social security benefits or medical insurance negotiations, while the trustee manages assets inside the trust. The agent's authority terminates at the death of the principal.

Health Care Agent. A health care agent is appointed in a health care power of attorney to make medical decisions, including nursing home placement, when the principal is incapable of making those decisions for himself. The principal may give specific direction in the document for the agent to follow or allow the agent to use his discretion when making end of life treatment decisions.

Can one person hold all offices? Yes, however often the skills and personality appropriate for making financial decisions are different than the skills and personality traits appropriate for making medical decisions. If different people serve in different offices, their ability to work together is very important.

Can two people serve in a position jointly? Yes, but it becomes cumbersome to have two people have to make decisions on everything and sign documents together. It is easier to have two people as successor Trustee (when time is not as critical) than two persons serving as agent or personal representative.