

on how much help the judge thinks the person needs. The judge will say what these powers are in a court order.

This process can often be avoided if the person you care for chooses an agent while they still have the mental ability to do so. Sometimes, people with agents still need this process if the agents abuse their power or if they need to do something that is not on the legal form (the durable power of attorney for finances).

Executor in a Will

A will is a legal form that says what the person you care for wants to happen to their money and property after they die. A will names an executor who will carry out their wishes. Executors must only do what the will says. Executors cannot make decisions about money or property while the person you care for is still living.

Qualities of a Good Fiduciary

Different fiduciaries can do different things, depending on the laws in your state and what the person you care for decided in his or her legal documents. What is common to all fiduciaries is that they have a big responsibility that can have legal consequences if not handled well. A good fiduciary will:

1. Carefully follow the directions the person you care for stated in his or her legal documents
2. If the directions are unclear, make decisions based on what the person you care for wants and needs, not what others want or think they are owed
3. Seek legal or other professional advice to make the best decisions
4. Protect money or property from being misused or stolen
5. Keep careful records of how money and property is being managed
6. Be able to handle the responsibility emotionally
7. Work with other fiduciaries and caregivers to provide for the needs of the person you care for

Next Steps

This handout is meant to give basic information only, not legal advice. If you have questions about the plans the person you care for made, or you think should make in the future, you should talk to a lawyer. Your Care Team Navigator can help you find a resource in the community, including free help if needed.



Who Can Make Financial Decisions for the Person I Care For?

Why Think About This Now?

The person you care for is likely to require more care in the future and you might be worried about how they or you will prepare financially. A good first step is to understand *who* can make financial decisions when the person you care for no longer can. This handout provides an overview of the different types of financial decision-makers, called fiduciaries, and what they can and cannot do.

Who are Fiduciaries?

Fiduciaries are people chosen to make financial and legal decisions for others. They can do things like pay another person's bills, manage Social Security benefits, or sell property. Some people have just one fiduciary and some have many fiduciaries to help them. There are different types of fiduciaries who can do different things, depending on what kind of authority they were given and how much help is needed.

What are the Types of Fiduciaries?

Spouses

If you are married to the person who needs help, you can make some decisions about money or property that you own together, but not all. This depends on the laws where you live. You cannot manage money or property that your spouse owns separately. If your spouse

appointed you as agent or trustee (see next page), you may be able to manage these things for your spouse. You should read the legal documents to find out what you can do. If you are not sure, you should ask a lawyer.

NOT Other Family Members (children, siblings, etc.)

Other family members usually are not allowed to make financial decisions for someone else just because they are family. For instance, adult children cannot make decisions for a parent unless their parent appointed them as agent or trustee (see next page). If a parent did not appoint an agent or trustee when they had the mental ability to do so, family members will likely have to go to court to have someone appointed.

Some people try to take shortcuts. For example, someone might put a family member's name on accounts or give them passwords. This can be risky for both parties. The person you care for could lose benefits or income. The family member could be accused of wrongdoing. We recommend getting information from a lawyer before taking action.

Agent in a Durable Power of Attorney for Finances

A *durable power of attorney for finances* is a legal form in which the person you care for names someone else—the *agent*—to manage his or her money and property. The form will say what the agent can and cannot do, like pay bills, manage property, or handle legal issues. The form will also say when the agent can start acting, which may not be right away. Not all forms are the same and the authority of the agent might be very limited, so it is important for the agent to read the form carefully and seek legal guidance as needed. The person you care for can only name or change an agent if he or she has the mental ability to understand what the form means. A lawyer or doctor can say whether your loved one has this ability. If not, a court process may be needed.

Trustee in a Living Trust

A *living trust* is a legal tool that says how the person you care for wants his or her money and property to be managed. A *trustee* is the person chosen to make decisions about money or property in the trust. There may be more than one trustee. Living trusts are different from wills. Trusts can be used to manage money or property for someone while they are alive, but wills are only used after they die. A trustee

may have limited power so it is important to understand what the trust documents say.

Your loved one can only create or change a trust if he or she has the mental ability to do so. A doctor or lawyer can evaluate whether your loved one has the ability to create a trust. A lawyer can help your loved one decide whether one is needed. Not everyone needs a trust because everyone's financial situation is different. Other legal tools might be cheaper and just as good. Beware of trust scams.

Social Security Representative Payee

This is someone who can receive and manage Social Security benefits for the person you care for. They have no power over any other money or property. This person must ask the Social Security Administration to appoint them once the person you care for can no longer manage benefits on their own. An agent, trustee, or conservator will still have to go through this process in order to manage these benefits.

Veterans Administration Fiduciary

This is someone who can receive and manage VA benefits for the person you care for. They have no power over any other money or property. This person must ask the Veterans Administration to appoint them once the person you care for can no longer manage benefits on their own. An agent, trustee, or conservator will still have to go through this process to be able to manage these benefits.

Professional Fiduciaries

This is a professional the person you care for can hire to be his or her agent, trustee, representative payee, or VA fiduciary. Judges sometimes appoint professional fiduciaries to serve as guardians or conservators as well. A professional fiduciary is sometimes helpful if there is conflict in families about money, or finances are complicated, or there is no one able to handle the responsibility. Professional fiduciaries generally charge fees.

Guardian or Conservator/Conservator of the Estate

This is someone a judge chooses in a court process to manage money or property for someone who cannot do this on their own. This person is called different things in different states: guardian, conservator, or conservator of the estate. A guardian or conservator's powers depend