

Estate Planning Terms, Definitions and Duties



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ESTATE & ELDER CARE ATTORNEYS

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DEFINITIONS

Fiduciary -A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence.

Executor – A person named by you in your Will to carry out the provision of your Will.

Trustee – The person or entity who is responsible for holding, investing and distributing the assets of a trust.

Attorney in Fact - One who is appointed to act (as agent) for another (principal) under a power of attorney. The scope of the agent's authority is limited to that given by the power of attorney, which may be limited to one specific act or may be broader.

Health care representative (also called *health care agent*) -The person selected in a health care power of attorney to make decisions about medical treatment and other health care matters for the individual who signs the document.

EXECUTOR

DUTIES

An executor's job comes with many legal obligations. Under certain circumstances, an executor can even be held personally liable for unpaid estate taxes. Let's review the major duties involved, which we've set out below.

In General, the executor's job is to:

1. Administer the estate, i.e., collect and manage assets, file tax returns and pay taxes and debts and
2. Distribute any assets or make any distributions of bequests, whether personal or charitable in nature, as the deceased directed (under the provisions of the will).

Let's take a look at some of the specific steps involved and what these responsibilities can mean. Chronological order of the various duties may vary.

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Step 1: Probate. The executor must "probate" the will. Probate is a process by which a will is admitted. This means that the will is given legal effect by the court.

The court's decision that the will was validly executed under state law gives the executor the power to perform his or her duties under the provisions of the will.

- Give Notice of Probate to Beneficiaries
 - If Charity is Beneficiary, Notice to Attorney General

Step 2: Manage the Estate. The executor takes legal title to the assets in the probate estate. The probate court will sometimes require a public accounting of the estate assets. The assets of the estate must be found and may have to be collected. As part of the asset management function, the executor may have to liquidate or run a business or manage a securities portfolio. To sell marketable securities or real estate, the executor will have to obtain stock power, tax waivers, file affidavits, and so on.

Step 3: Take Care of Tax Matters. The executor is legally responsible for filing necessary income and estate-tax returns (federal and state) and for paying all death taxes (i.e., estate and inheritance). The executor can, in some cases be held personally liable for unpaid taxes of the estate. Tax returns that will need to be filed can include the estate's income tax return (both federal and state), the federal estate-tax return, the state death tax return (estate and/or inheritance), and the deceased's final income tax return (federal and state). Taxes usually must be paid before other debts. In many instances, federal estate-tax returns are not needed as the size of the estate will be under the amount for which a federal estate-tax return is required.

An employer identification number ("EIN") should be obtained for the estate; this number must be included on all returns and other tax documents having to do with the estate. The executor should also file a written notice with the IRS that he/she is serving as the fiduciary of the estate. This gives the executor the authority to deal with the IRS on the estate's behalf.

Often it is necessary to hire an appraiser to value certain assets of the estate, such as a business, pension, or real estate, since estate taxes are based on the "fair market" value of the assets. After the filing of the returns and payment of taxes, the Internal Revenue Service will generally send some type of estate closing letter accepting the return. Occasionally, the return will be audited.

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Step 4: Pay the Debts. The claims of the estate's creditors must be paid. Sometimes a claim must be litigated to determine if it is valid. Any estate administration expenses, such as attorneys', accountants' and appraisers' fees, must also be paid.

Step 5: Distribute the Assets. After all debts and expenses have been paid, assets will be distributed. Extra attention and meticulous bookkeeping should be given by the executor. Frequently, beneficiaries can receive partial distributions of their inheritance without having to wait for the closing of the estate.

- Prepare accounting
 - Obtain child support judgment clearance
 - Release and Refunding Bonds

If you have been named the executor or administrator of someone's estate, Bratton Law can provide you the guidance you need to ensure that you are on the right path.

POWER OF ATTORNEY

DUTIES

The Attorney-in-Fact is responsible for making decisions about money, property, or both belonging to the Principal, and to spend the Principal's money, property, or both on the Principal's behalf, in accordance with the terms of this Durable Power of Attorney.

This Durable Power of Attorney is valid only if the Principal is of sound mind when the Principal signs it. When acting in the capacity of Agent, you are under a duty (called a "fiduciary duty") to observe the standards observed by a prudent person, which means the use of those powers that is reasonable in view of the interests of the Principal and in view of the way in which a person of ordinary judgment would act in carrying out that person's own affairs. If the exercise of your acts is called into question, the burden will be upon you to prove that you acted under the standards of a fiduciary.

The Agent, also called an Attorney in Fact, is not entitled to use the money or property for his or her own benefit or to make gifts to yourself or others unless the Durable Power of Attorney specifically gives the authority to do so.

As the Agent, the authority under this Durable Power of Attorney will end when the Principal dies.

Violation of the fiduciary duty under this Durable Power of Attorney, may lead to liability for damages and may result in criminal prosecution.

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HEALTH CARE AGENT

- Makes end of life decisions and decisions regarding your care
- Talk to them ahead of time so that they are clear as to your wishes.

Your agent needs to be willing and able to make potentially difficult decisions about medical treatment for you. Discuss your desires, values, fears, and preferences about medical care in various situations. The more your agent knows about you and your values, the more likely he or she will be to make the kinds of decisions you would make if you were able.

CONTACT US

We are here to help. Please feel free to contact us with any questions you may have or any assistance you may require.



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