

FAQ: What is a fiduciary?

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A **fiduciary** is a person or institution given the power to act on behalf of another. A fiduciary holds a legal and ethical duty of trust with one or more other parties and has undertaken to act for and on behalf of another. This duty gives rise to a relationship of trust and confidence. A fiduciary relationship exists when a person or entity acts as a **Guardian, Personal Representative, Trustee** or in any other capacity for the benefit of another.

What is a Guardian?

A **Guardian** is a person who has been named under someone's Will or appointed by a judge to take care of and manage the affairs of a person who is disabled. A person is considered disabled for this purpose if he or she is a minor (generally under age 18) or is unable to handle his or her affairs. An individual may be appointed Guardian of the person, Guardian of the property, or both, and the appointment may be temporary or permanent. The Guardian of one's property generally has periodic filing requirements with the court, and may also be limited in the kinds of investments and distributions that he or she may make; to avoid these burdensome requirements, it is generally recommended that one execute a Financial Power of Attorney.

What is a Personal Representative?

A **Personal Representative** (known in some states as an **Executor**) is a person or entity named in a Will who, once appointed by the court, will carry out the duties provided in the decedent's Will. These duties differ from state to state and generally include representing the decedent's estate in the probate process, inventorying the estate's assets, paying debts and taxes, defending claims and distributing assets to the estate beneficiaries. The Personal Representative may, but is not required to, hire a law firm to assist with these responsibilities.

What is a Trustee?

A **Trustee** is a person or entity named to administer a Trust for the benefit of one or more beneficiaries. The responsibilities of the Trustee depend on the terms of the Trust, but will generally include carrying out the terms of the Trust agreement, investing the Trust assets, making distributions to the beneficiary(ies) as needed, and filing tax returns. The Trustee may hire other professionals (financial advisors, accountants and lawyers) to help carry out these duties.

What recourse do I have if a fiduciary fails to properly carry out his or her duties?

A fiduciary is obligated to act in the best interest of the persons to whom he or she owes the duty (the "principals"). Fiduciaries may not profit from their relationship with the principals without the principals' consent. They have a duty to avoid any conflicts of interest between themselves and the principals. Conduct based on acts, omissions or concealment of facts may be deemed fraudulent when the conduct of the fiduciary gives one an advantage against another person or entity, even if it is not fraudulent in nature. When a fiduciary duty has been breached a court may fashion both legal and equitable remedies depending on the type of damage incurred by the principals.