

WHO'S WHO IN ESTATE PLANNING

In each estate plan, certain people are appointed to be responsible for particular tasks, and other people have certain rights under wills and trusts. The primary positions are the following:

Settlor or Trustor - Creator of a trust. A trust is a legal entity that holds title to assets on behalf of the Settlers for the benefit of the trust Beneficiaries.

Beneficiary - Person who has the right to receive property under a will or a trust.

Decedent - Person who has died.

Trustee - Person who controls and administers a trust. The Trustee determines who is entitled to receive income or principal and how and when distributions should be made, subject to the terms of the trust. Co-trustees share in the control and administration of the trust. A Successor Trustee is a person who controls and administers a trust after a previous Trustee dies, resigns, or is disqualified. After the death of the initial Trustees (who are usually the Settlers), the Successor Trustee takes control of the assets of the trust, pays the debts of the Settlers, and distributes the remaining assets of the trust according to the provisions of the trust.

Testator - Person who makes a will. A will is a document providing for the transfer of property upon a person's death.

Executor or Personal Representative - Person who probates and administers a decedent's estate. Probate is a court proceeding to supervise the administration of a will, or to pass title to property of a decedent who dies without a will. The Executor applies to the court for appointment as Executor and for confirmation of the validity of the last will, collects the assets subject to probate (which generally do not include trust assets, life insurance proceeds, or retirement account proceeds), pays the debts of the decedent, and distributes the remaining assets according to the provisions of the will. If the assets under the will are insufficient to require a court proceeding, the Executor transfers them to the Beneficiaries by affidavit.

Guardian - Person appointed to care for the person or property of a minor child.

Conservator - Person appointed to care for the person or property of an incapacitated adult.

Attorney In Fact or Agent - Person who is appointed to make decisions under a property management power of attorney or an advance health care directive. A Property Management Power of Attorney is a document which authorizes a person (an "Attorney In Fact" or "Agent") to act on behalf of another person (the "Principal") with respect to the Principal's property. A Power of Attorney is called "Durable" if it becomes or remains effective after the Principal becomes legally incapacitated. An Advance Health Care Directive is a document which authorizes a person (an "Agent") to make health care decisions for another person ("the Principal") usually after the person becomes legally incapacitated. Advance Health Directives usually include "living will" provisions relating to continuation or termination of extraordinary care.

Principal - Creator of a power of attorney or health care directive.

Fiduciary - Person who has legal responsibilities to another person, generally as a Trustee, Executor, Guardian, Conservator, Attorney in Fact, or Agent.

It is important for you to provide your attorney with the names, addresses, and telephone numbers of each Fiduciary and Alternate or Successor Fiduciary. These include: 1) Trustee, 2) Executor, 3) Guardian, 4) Agent under Health Care Directive, and 5) Attorney in Fact under Power of Attorney.

THIS MATERIAL IS NOT LEGAL ADVICE. FOR IMPLEMENTATION, CONTACT A QUALIFIED ATTORNEY.