



Fiduciary: involving trust, especially with regard to the relationship between a trustee and a beneficiary (*adjective*). A Trustee (*noun*).

So, has a family member or friend appointed you as a “fiduciary” over his or her estate plan? If yes, then consider it an honor to be considered worthy of such trust and confidence. On the other hand, be mindful of the attending responsibilities you will need to fulfill. In fact, any failure to satisfy these responsibilities could land you in hot water. And, to be sure, those are consequences you want to avoid.

What is a Fiduciary?

For our purposes the legal titles for a fiduciary in the estate planning, estate administration and estate distribution contexts include executor, personal representative or trustee. The difference between these titles is the specific role played by the fiduciary at a given time. Commonly, however, the roles of executor, personal representative and trustee are played by the same person.

Executor and personal representative are really different titles for the same role: the person appointed in a will to wrap up an estate in probate. This role lasts only until the probate process is formally closed and the will directs that the estate is either distributed outright to the beneficiary (or beneficiaries) or to a trustee appointed in the will as “beneficiary” for administration

and distribution to the actual beneficiaries under the will. Note: As an alternative to using a will and its eventual probate, a living trust can be created while the estate owner is living. If properly created and funded, this approach may avoid any future probate of the estate whether distributed outright or otherwise.

Why do people choose to leave estate assets in trust for their loved ones instead of simply providing for outright distributions? The reasons are as varied and unique as each family situation. For example, heirs may have special needs, spendthrift tendencies, marital problems, lawsuits or bankruptcy issues. In addition, there may be legacy assets to preserve and retain long-term, such as family businesses, farms, ranches or vacation homes.

All that noted, before you agree now to serve as a fiduciary later, you should get informed, organized, connected and, ultimately, protected.

Get Informed

If you have been appointed as a fiduciary, there are certain steps you should take to help ensure all goes according to Hoyle when the time comes for you to assume your duties.

For example, what is the estate game plan and how do you fit into it? What better person to educate you regarding the estate plan and the assets involved than the person actually appointing you in his or her estate plan. Schedule time to meet face to face and request copies of all relevant legal documents in advance. Also suggest that the drafting attorney be present to provide an overview of the estate plan and answer any questions you may have after reading the legal documents.

Consider making a list of questions before the meeting. For example, you may want to know who will be guiding you through the process, whether co-fiduciary and successors have been appointed, whether you may hire legal, accounting and/or investment professionals and, whether you can appoint a corporate fiduciary if anything gets too complicated. Also, you may want to know whether you will be compensated for your services (or at least reimbursed for out-of-pocket expenses).

Get Organized

One of the essential keys to a successful estate plan is the degree to which it is organized and the level of recordkeeping before you step in as trustee. Why? The person who owned the assets, created the

estate plan and appointed you will no longer be among the living when you assume your responsibilities. Without proper organization and recordkeeping you could spend months (or years) on a very time-consuming and expensive “treasure hunt” that could have been avoided. For example, does the estate owner have a safe-deposit box? If yes, which bank, what is the box number and where is the key kept?

Therefore, in addition to copies of all relevant legal documents, ask the estate owner to provide you with a detailed schedule of his or her assets. This schedule should include what they are and where they are located. The more detail, the better.

Get Connected

While you are at it, after having met with the estate planning attorney, have the estate owner provide the names and contact information for his or her CPA, insurance agent and financial advisor.

Follow up with a quick note or email introducing yourself, as communication is a two-way street.

Get Protected

Your fundamental duty as a fiduciary is loyalty to the estate owner and his or her beneficiaries while remaining impartial and avoiding conflicts of interest. You also must manage and account for the assets under your stewardship even more carefully than your own. This includes insuring physical assets and taking steps to preserve the value of invested assets.

What about taxes and creditors? If you are less than timely when it comes to filing appropriate tax returns and providing required notice to creditors of the estate, then you may be held personally liable!

Serving as a fiduciary is at once an honor and a serious responsibility. Before you agree to serve, look before you leap.



Understanding the Probate Process

Simply put, probate is a court process through which a decedent's assets are identified, any debts, taxes or expenses paid, and, finally, the inheritance is either distributed outright to loved ones or is administered and distributed to them through a trust.

Identify, Gather & Manage

Since organization and recordkeeping are the dynamic duo when it comes to a successful probate, most probate problems can be mitigated, if not avoided completely, by minding the basics. Many families have found some helpful tools to simplify this task. For example, one available resource can be ordered online at www.myducks.org. Many people have found the “myducks” hard copy and digital organizational tools easy to use and comprehensive. Whatever tool one chooses to use, the only one that will work is the one you will use ... and maintain.

Settle Financial Matters

Rarely does anyone leave this life without a few financial matters to resolve. Whether the roofer, the IRS or the funeral home, chances are good your estate will have some financial liabilities to pay on your behalf. Except for “known” creditors, all states provide for an outside time limit for unsecured creditors to make a claim against the estate. This provides protection for estate beneficiaries after the probate is closed.

Inheritance Distributions

When using a will, there are three basic approaches to inheritance distributions at the close of the probate process.

- **Outright:** As soon as the probate steps are completed, the inheritance

is distributed without any “strings” attached.

- **Staggered:** Outright distributions are made at certain beneficiary ages or triggering events (e.g., one-half at age 25 with the balance at age 30).
- **Long-Term Discretionary:** Distributions are made to or for the benefit of beneficiaries in the judgment of the trustee, offering the greatest protection from squandering, divorces, lawsuits or bankruptcies.

Probate Perspectives

Probate is not the same in every state. Therefore, given the mobile nature of our society, you should have your estate plan reviewed and perhaps revised if you relocate. For instance, in some states the probate process is simple and streamlined; while in others it can be more complex and cumbersome.

Significantly, too, some states provide minimum statutory fees to the attorney

and estate fiduciary based on the value of the assets subject to probate. Other states require the attorney and estate fiduciary to track their actual time and the probate judge ultimately approves, disapproves or revises the fees based on whether they are reasonable.

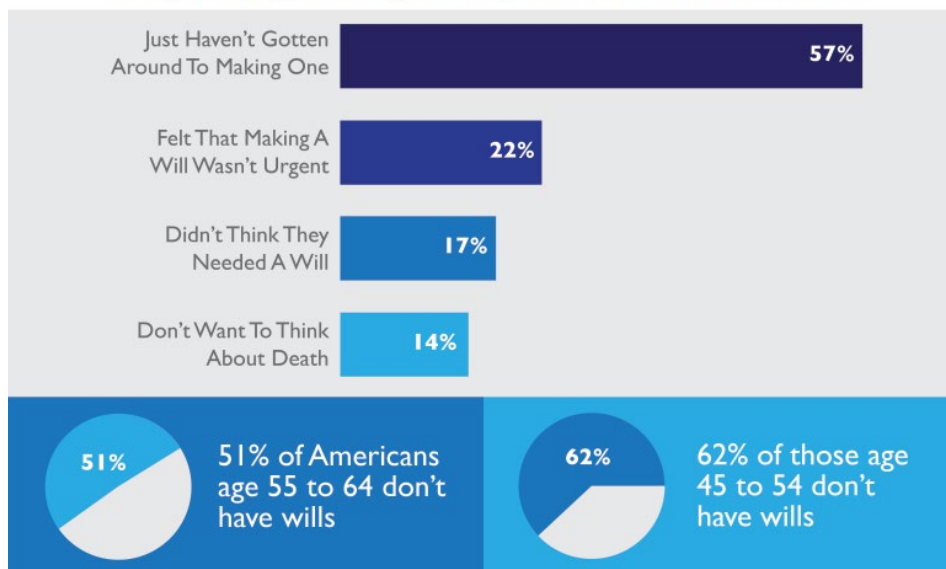
Not surprisingly, in those states where probate is more complex, cumbersome and expensive, many estate planning attorneys advise clients to avoid probate. Common probate avoidance approaches include funded revocable living trusts, transfer on death designations and beneficiary designations for life insurance and retirement funds.

Ultimately, an estate planning attorney can advise you regarding the benefits and detriments of probate planning or probate avoidance planning.

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Why People Say They Don't Have Wills



Source: <http://www.forbes.com/sites/nextavenue/2014/04/09/americans-ostrich-approach-to-estate-planning/>

If you think it's hard
to meet new people,
**try picking up the
wrong golf ball.**

Jack Lemmon

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Jude Redkey, founding partner of Redkey Gordon Law Corp, has practiced personal injury law for 15 years. If someone you know needs a free consultation please feel free to contact our office. Mr. Redkey graduated from University of California, Davis and received his Juris Doctorate from University of Denver, College of Law. Mr. Redkey is admitted to practice law by the State Bar of California and U.S. District Court, Eastern District of California. He is also a Judge Pro Tempore for the El Dorado County Superior Court.

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