

THE ROLE OF FIDUCIARIES IN YOUR ESTATE PLAN

*It Is Imperative that You Understand What Each Fiduciary Role
Encompasses and What Should Be Considered
When Making a Decision About Whom to Appoint*



JOHN R. VERMILLION



Creating a comprehensive estate plan requires careful thought, foresight, and planning. Numerous decisions must be made during the course of your estate plan creation. Most people assume that decisions regarding the distribution of estate assets are among the most

important decisions that need to be made in an estate plan.

While those decisions are certainly necessary, the fiduciary decisions you make in your estate plan often exert more influence over the success of your plan than any other decisions. For this reason, it is imperative that you understand what each fiduciary role encompasses and what should be considered when making a decision about whom to appoint.

EXECUTOR

A well constructed last will is going to include the selection of an executor. People often make the mistake of naming an executor without giving much thought to the duties and responsibilities that go along with being the executor of an estate. The complexity of an executor's role will depend, to a large extent, on the size, complexity, and value of the estate being probated; however, there are some duties and responsibilities that are common to almost all executor positions, including:

- **Locating and Inventorying Assets**

Your executor must locate all estate assets, tangible and intangible, real and personal. All assets must be inventoried and the inventory submitted to the appropriate court in a formal probate.

- **Valuing Estate Assets**

The value of estate assets must be determined. Often, this requires retaining the services of professional appraisers. A real estate appraiser may need to be hired to value real property while professional estate appraisers may need to provide values for other estate assets.

- **Opening Probate**

The executor must prepare all of the documents needed to officially open the probate of your estate. For moderate to large estates this is usually done with the assistance of an estate planning attorney; however, your executor ultimately has the responsibility to open and oversee the probate.

- **Notifying Creditors**

Once probate has been opened, creditors of the estate must be notified. In some cases this is done individually; however, the public at large must also be notified via publication in a local newspaper.

- **Reviewing Claims**

Creditors of the estate then have a specific amount of time within which to file a claim against the estate. Your executor must review all claims and decide whether to approve them or not. If approved, they are paid out of estate assets. If they are not approved the claimant may decide to appeal to the court, in which case your executor must oversee the litigation of the claim.

- **Defending Challenges**

If a will contest is filed, your executor has the responsibility to defend your estate in the litigation of the will contest that follows.

- **Paying Taxes**

Your estate must file a tax return. Your executor is responsible for preparing and filing the return.

- **Transferring Assets**

At the end of the probate process your executor must complete all necessary documents to effectuate the legal transfer of estate assets to the proper beneficiaries.

TRUSTEES



Trusts have become a more common addition to even a basic estate plan in recent years. All trusts require the maker to appoint a trustee. Appointing a successor trustee is also commonly done. The trustee of a trust has a wide variety of duties and responsibilities, including:

1. **Fiduciary Duty**

A trustee has a fiduciary duty to the trust and all current and remainder beneficiaries. A trustee must use an even higher standard when administering a

trust and investing trust funds than would be used with his or her own funds or investments.

2. Trust Terms

Unless they are illegal or unconscionable, the trust terms must be followed.

3. Accounting

A trustee must keep very precise and accurate accounting records. An accounting is usually required to be provided to beneficiaries each year as well. In addition, because a trust is a separate legal entity, tax returns must be prepared and filed each year.

4. Discretion

Some trusts provide the trustee with very little discretion while others provide a trustee with wide latitude in making decisions regarding investment and distributions. If your trustee has a considerable amount of discretion, your trustee can significantly impact the success or failure of the trust.

AGENTS

An agent is someone to whom you give legal authority to act on your behalf. When you execute a power of attorney, for example, the person to whom you give authority is your agent. Another important area of your estate plan where you may appoint an agent is in the area of incapacity planning. Texas recognizes four different types of advanced directives. A medical power of attorney is the advanced directive that allows you to appoint someone to make healthcare decisions for you if you become incapacitated. The agent you appoint in a medical power of attorney may make three very important decisions for you:

1. Agreeing to or refusing medical treatment
2. Deciding not to continue medical treatment
3. Making decisions to stop, or not start, life-sustaining treatment

GUARDIANS

If you have minor children, or plan to have them in the future, you will likely want to appoint a guardian in your Last and Testament. In the event that both parents die, or are otherwise unable to care for a minor child, a court must legally appoint a guardian for the child. Your Will is the only opportunity you have to let a court know whom you wish that guardian to be.

Now that you understand the complexity of the various fiduciary roles in your estate plan, as well as the influence they can have on the success of your plan, you should be prepared to spend the time and attention necessary to choose the right person for each role.

Texas Estates Code, [Executors and Administrators](#)

Elder Law Answers, [A Brief Overview of a Trustee's Duties](#)

Lorman Education Services, [The Importance of a Fiduciary in Estate Planning](#)

Journal of Financial Planning, [Selecting and Maintaining Appropriate Fiduciaries in an Estate Plan](#)

Texas Health Resources, [Living Will](#)

About the Author

John R. Vermillion



John R. Vermillion works as an estate planning and probate attorney and is licensed to practice in Texas, Louisiana, Oklahoma, and Tennessee. A native Texan, he graduated from Texas Christian University in 1974 receiving a Bachelor of Arts Degree in Political Science. In 1977, he received his Juris Doctor degree from the Louisiana State University Law School.

Upon graduation from law school, Mr. Vermillion worked extensively as a corporate attorney in the fields of oil and gas exploration and production, real estate development, finance and estate planning. He served for many years as corporate counsel and Vice President of a private independent oil and gas company.

Mr. Vermillion is a member of the State Bar of Texas, the Dallas Bar Association, the Louisiana State Bar Association, the Oklahoma Bar Association, and the Tennessee Bar Association. He is a member of the American Academy of Estate Planning Attorneys and the National Academy of Elder Law Attorneys.

Also active in his community, he currently serves as a director for the Charles Coody Classic Golf Tournament which benefits Catholic Charities of Fort Worth, Texas. A member of the French-American Chamber of Commerce, Louisiana Chapter, Mr. Vermillion pursues their goal of promoting and developing commercial and financial relations between France and the United States. In addition, he serves on the TCU Dallas Alumni Board and sponsors the Dallas area NAMI Walkathon (National Alliance for Mental Illness).

Coming from a family of entrepreneurs, Mr. Vermillion has owned and operated his own businesses, including an historic inn. His experience has given him a hands-on understanding of the legal and practical issues facing his clients and their estate planning needs.

The Vermillion Law Firm, LLC
www.vermillionlawfirm.com

7616 LBJ Freeway #120
Dallas, TX 75251
Phone: (972) 386-4560
Toll Free: (888) 567-574