

When a Client May Need a Professional Fiduciary

A Referral Guide for Attorneys

This guide is designed to help attorneys recognize situations where a professional fiduciary appointment may serve a client's interests. It is not intended to replace legal analysis of any specific case.

Situations That May Warrant a Professional Fiduciary

You may begin to identify one or more of the following circumstances:

No Appropriate Individual Available to Serve

- No family member or friend is available, willing, or appropriate to serve in a fiduciary role
- Client is a solo ager with no informal support network
- Available family members lack the skills, capacity, or proximity to serve effectively
- Minor has no available or appropriate guardian

Conflict or Complexity

- Family members are in conflict over care, finances, or decision-making
- Concerns about undue influence, exploitation, or self-dealing by a current or proposed fiduciary
- An existing lay fiduciary is overwhelmed, underperforming, or being challenged
- Multiple fiduciary roles are needed (e.g., guardian and conservator, trustee and agent under POA)
- Case involves multi-jurisdiction issues, complex assets, or high-conflict family dynamics

Proactive Planning

- Client has proactively requested a professional fiduciary in their estate planning documents
- Client wants a neutral, independent fiduciary rather than a family member
- Client is planning for future incapacity and has no appropriate individual to name

Court or Institutional Indicators

- Court has indicated a preference for a professional appointment
- Existing fiduciary arrangement has failed or is being challenged
- Institutional stakeholders (hospital, facility, agency) have identified the need for formal authority over the client's affairs

The Six Professional Fiduciary Roles

- Guardian – Personal and healthcare decision-making authority, court-appointed
- Conservator – Financial and property management authority, court-appointed
- Trustee – Administers trusts per the governing document; may or may not involve court oversight
- Estate Administrator – Administers the closing of an estate, including asset marshaling, debt resolution, and distribution to beneficiaries, whether through probate or outside of it
- Agent under Power of Attorney – Acts for the principal per the POA document; no court involvement unless challenged
- Representative Payee / VA Fiduciary – Manages government benefits on behalf of a beneficiary. Although not traditionally classified as a professional fiduciary role, its responsibilities, accountability standards, and reporting requirements closely mirror those of a fiduciary, and many professional fiduciaries serve in this capacity alongside their other roles.

Evaluating a Professional Fiduciary

When recommending a professional fiduciary, consider:

- **Authority and role alignment:** Is the fiduciary authorized and experienced in the specific role required?
- **Credentials and standing:** Is the fiduciary licensed, certified, bonded, and insured as required by the jurisdiction?
- **Experience and case fit:** Does the fiduciary's experience align with the complexity of this case?
- **Practice systems:** Does the fiduciary use defined case management processes, maintain organized records, and separate client and personal finances?
- **Ethics and risk management:** Does the fiduciary identify and manage conflicts of interest and welcome oversight?
- **Communication:** Does the fiduciary communicate clearly and proactively with attorneys, families, and other professionals?
- **Capacity and continuity:** Does the fiduciary have capacity for this case and a succession plan in place?

For a detailed evaluation framework with suggested questions, see the How to Evaluate a Professional Fiduciary checklist, available at www.thefiduciaryinstitute.com/for-allied-professionals.

Next Steps

- Evaluate whether the client's situation calls for full or limited authority (guardianship, conservatorship, or alternatives)
- Consider least restrictive alternatives before recommending a full appointment
- Assess potential fiduciaries using the evaluation framework above
- Contact The Fiduciary Institute for additional resources or to request a speaking engagement for your firm, bar section, or association

About The Fiduciary Institute

- The Fiduciary Institute is a national, standards-driven platform that integrates training, tools, community, and credentialing development into a unified professional ecosystem for fiduciaries. The resources on this page are grounded in The Fiduciary Method™, our proprietary framework for structured, accountable fiduciary practice.
- Learn more at www.thefiduciaryinstitute.com