THE FIDUCIARY INSTITUTE
Guiding Fiduciaries to Excellence

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

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 (also called personal representative or executor):** 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:

© The Fiduciary Institute • Educational use for allied professionals

- **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 organization that integrates training, tools, community, and research into a unified ecosystem for professional fiduciaries. The resources on this page are grounded in The Fiduciary Method™, our proprietary framework for structured, defensible decision making.

Learn more at www.thefiduciaryinstitute.com