



JOHN ANDERSON

ESQUIRE

Roles in Estate Planning

Dear Friend,

You have an important role to play. Someone trusts you an awful lot. A family member or friend has included you in his or her estate plan. This very brief summary document is intended to give you a general overview of what your role is and what it involves.

The key to your success in any of these roles is open communication with the person(s) in whose estate plan you are involved. You need to sit down with the person who named you in one of these roles and make sure that you understand that person's desires and expectations for you. If you feel uncomfortable serving in a named role, you should tell the person so that the estate plan can be adjusted now. If you wait, it may be too late, and the person's estate plan may not function as intended.

Your friend or family member has trusted me for advice on his or her estate planning needs. If you have any questions, please don't hesitate to contact me. I never bill by the hour, so it won't cost you a thing. My contact information is below.

— John Anderson, Esquire

Important Definitions:

- Agent: a person who acts on behalf of a Principal as instructed in certain documents
- Assets: the stuff a person owns or possesses, like money, property, personal possessions, etc.
- Beneficiary: a person who is entitled to the benefits of certain assets (i.e., a person who receives life insurance proceeds or inherits under a Will or Trust)
- Decedent: a person who has died
- Principal: a person who creates and signs a Power of Attorney, Healthcare Power of Attorney, or Healthcare Directive
- Probate: the court process by which a Decedent's assets are managed and/or distributed
- Trust: a "box" of sorts that is created by someone to hold assets with instructions about how to manage and/or distribute those assets to the Trust's beneficiaries
- Trustee: a person who follows the instructions of the Trustor(s) as provided in the Trust documents
- Trustor: a person who creates a Trust (there can be more than one Trustor of a Trust)
- Will: a document that gives instructions about how to manage or distribute a person's assets after they die

Trustee or Successor Trustee

When a Trustor creates a Trust, the Trustor names Trustees or Successor Trustees to manage the Trust if the Trustor is either unwilling or unable to do so (most often because of incapacity or death). If you were named as a Trustee or Successor Trustee, you have an important duty to follow the Trustor(s)' instructions about how to manage and/or distribute the assets held within the Trust. Most of the time, the instructions are relatively clear. In some instances, you are expected to exercise discretion to fulfill the desires and instructions of the Trustor(s). So long as you make reasonable decisions based on verifiable, objective facts, you are generally protected from any liability in your role as a Trustee or Successor Trustee. But you should know that you have what are called "fiduciary duties" to act in good faith, to maintain accurate and complete records, and generally to be responsible.

Personal Representative

A Personal Representative is like a Trustee for a Decedent who has no Trust, or who has a Trust but there are additional assets that were not held in the Trust and have to be managed and/or distributed through Probate. In cases where there is a Will, a Personal Representative follows the instructions provided in the Will. In cases where there is no Will, a Personal Representative follows the default rules established by state law. Just as with Trustees and Successor Trustees, a Personal Representative has "fiduciary duties" to act in good faith, to maintain accurate and complete records, and generally to be responsible. Because a Personal Representative is a party in a Probate action, the Personal Representative must report to the court.

Agent for Power of Attorney

An Agent is someone who is given authority to act on behalf of another person, called a Principal, usually in connection with financial or property matters, through a document called a Power of Attorney (POA). POAs are commonly used when someone becomes incapacitated, for example, and is unable to pay bills, access funds, manage property, meet household needs and expenses, etc. The Agent is given authority through the POA to act on behalf of the Principal so that these various acts can be accomplished. An Agent's authority is limited to only those functions that are allowed within the POA. Often, as in the case of incapacity, one or two doctors must certify that the Principal is unable to act for himself before the Agent's authority "springs" into effect.

Agent for Healthcare

An Agent for Healthcare is someone who is given authority to make medical and health decisions on behalf of another person, called a Principal, through a document called a Healthcare Power of Attorney or Living Will (HPOA). For example, an Agent for Healthcare may be called upon to review medical records and consult with family members and doctors in deciding whether to initiate or terminate life support measures, perform certain operations or surgeries, provide medication, etc. when the Principal is unable to make these decisions by himself. This is an important role that can involve life or death decisions and are very sensitive. To the extent a Principal has prepared a thorough HPOA and/or Healthcare Directive, an Agent is responsible for simply following the instructions provided in those documents.

Guardian

A Guardian is someone who takes custody of another person's minor child when that child has no parent available. A Guardian may be necessary on a temporary basis when a parent or both parents is/are incapacitated, or permanently in the event of both parents' deaths. A Guardian in effect becomes the child's parent and is responsible for raising the child, providing for the child's needs, teaching the child, etc. For most parents, the role of Guardian is the most important role they name. A parent naming you as a Guardian is entrusting you with his or her most precious stewardship.

Temporary Guardian or First Responder

A Temporary Guardian or First Responder is someone who is called upon to fill in as a "guardian" until a named Guardian becomes available. For example, if parents are involved in a car accident, they do not want their child taken into protective custody, but instead want their child to be able to remain at home with family or friends whom they know and trust and who can better provide for the child's care. As a Temporary Guardian or First Responder, you fill that important role and often are the one who provides needed comfort and support to a child during a stressful, scary, and uncertain time.

What To Do Now?

Here's what to do next:

1. **Contact the person who involved you in their estate plan.** Confirm your role. Set up a time to get together to talk about it.
2. **Get additional education and information.** I have tons of information about these roles and estate planning in general on my website. I am adding new information all the time.
 - a. Access the website at www.johnandersonesquire.com.
 - b. Access information on roles specifically at www.johnandersonesquire.com/roles.
 - c. Subscribe to my mailing list. I send out information often about various estate planning topics. Go to the Roles page on my website to subscribe.
 - d. Come to a seminar or attend a live webinar online. You can access my event schedule online.
3. **Schedule a Family Wealth Planning Session yourself.** I offer it to you for free because you are acting in a role for another of my clients and friends. I also offer you special discounts that are not available to others. Details are on the Roles page online.
4. If something happens and you find yourself in one of these roles, contact me right away. I can help.

Thank you for serving in a role.