



**The Peninsula Center**  
**for Estate and Lifelong Planning**  
**Attorneys and Counselors at Law**

461 McLAWS CIRCLE, SUITE 2  
WILLIAMSBURG, VIRGINIA 23185  
Telephone: (757) 969-1900  
Facsimile: (757) 969-1903  
[www.tpcestate.com](http://www.tpcestate.com)

---

### **Choosing a Good Fiduciary**

Many people do not want to think about estate planning because it is scary to think about a time when you are no longer in control or able to make your own decisions. Therefore, it is crucial that you choose wisely in deciding who you want to handle your affairs and make decisions on your behalf.

First, it is important to understand that the decision-maker you choose is serving in a fiduciary capacity, which means that he is bound by the highest duty which exists under the law. This is true even if you choose a child or family member to serve. When he is acting on your behalf, your decision-maker has the same duty to you as an attorney has to her clients or a doctor has to her patients. Your decision-maker must understand this, and must understand that he can be held personally liable if he breaches, or violates, this duty. Thus, when your child is serving as your decision-maker, he is not merely acting out of love or out of a sense of familial duty; rather, he has a legal, fiduciary responsibility to act in your best interests. A good fiduciary understands when and how it is appropriate to act in his capacity as your fiduciary versus when and how it is appropriate to act as your child or loved one.

A good fiduciary will keep thorough, accurate records of your finances. With the rise of online banking, many individuals no longer take the time to balance their

checkbooks or keep receipts from transactions. This cursory record-keeping is fine if you are managing your own money, but a good fiduciary will keep thorough records of all actions she has taken as your fiduciary. In some cases, your fiduciary is required to submit detailed accountings of her actions to the Commissioner of Accounts, which is an arm of the court; however, even if the fiduciary does not need to account to the Commissioner, she will nonetheless maintain good records because she will need to be able to account to your beneficiaries.

A good fiduciary must be detailed, responsible, and good enough at managing his own finances that you feel comfortable having him manage yours. Your fiduciary must keep your assets separate from his own. Additionally, a good fiduciary will make cautious, prudent financial decisions on your behalf. The law does not penalize an individual for making bad financial decisions with his own money, but it does penalize a fiduciary for mismanaging someone else's money, regardless of whether that mismanagement occurred intentionally or accidentally, unless the fiduciary can show he acted prudently in making his decisions.

Your fiduciary must also have the time to devote to serving as your decision-maker. Managing another person's legal and financial affairs can take a substantial amount of time, especially during the initial period when the fiduciary is first taking over. Choosing a person who is busy with a demanding career, raising her own family, or serving as a fiduciary for other family members might mean that the fiduciary does not have sufficient time to devote to managing your affairs carefully and correctly.

Now that you know the attributes of a good fiduciary, here are some common perceptions that people have about naming a fiduciary and some insight on why you should – or should not – consider these factors in deciding who to choose:

**Myth: You should choose the same person as fiduciary in all of your estate planning documents.**

We often recommend that clients name the same person as agent under your Durable Power of Attorney, trustee of your Revocable Living Trust, and personal representative of your Last Will and Testament. These three roles all pertain to your legal and financial affairs, so it makes the most sense to name the same person to handle all of these affairs. However, your agent under your Medical Power of Attorney need not be the same person serving in the other roles. Someone with financial prowess may not handle medical situations well, and it is important that you choose the best person for each specific job.

**Myth: You should name your oldest child as your fiduciary.**

If your oldest child is also your most responsible child, then by all means, you should consider naming him as your fiduciary. However, being the oldest does not automatically mean that this child is the best choice to serve. You should consider all factors, not merely age, in deciding who to name.

**Myth: You should name your child who lives geographically closest to you as your fiduciary.**

It could certainly be helpful for your fiduciary to live close to you, your doctors, and your banks for greater ease in allowing your fiduciary to assume control of your affairs. Additionally, if the personal representative of your will is a resident of Virginia, she may not be required to pay for a surety bond to serve. However, thanks to twenty-first century technology, it is very possible for your fiduciary to manage your affairs from a distance: cell phones, online banking, and patient portals make it very feasible for a fiduciary to serve from out-of-state. Therefore, though geography is a factor to consider, it is not the only factor.

**Myth: You should name all of your children to serve jointly as your fiduciary.**

Often, parents come to us and say that they do not want their children to feel left out if they choose only one child to serve as fiduciary. Sometimes, parents want to name all children so there is a system of checks and balances, and no one child can assume all control. While there can be benefits to naming multiple individuals as co-fiduciaries, this can also cause gridlock if the fiduciaries disagree on how to handle a situation. So often, families think that children will be able to get along and serve peacefully as co-fiduciaries, and it is not until times get stressful and you need your fiduciaries to act that you realize they do not actually get along as well as you expect. If you do decide to name multiple fiduciaries, you can decide whether you want to require that they serve jointly, or whether you want each individual to be able to act independent of the others.

**Myth: You should name your parent, sibling or a close friend as your fiduciary.**

For younger clients who may not yet have children or who have minor children, a parent, sibling, or close friend could be a great choice to serve as your fiduciary. However, you must consider that your fiduciary will be serving at a time when you are no longer able to manage your own affairs. Therefore, if you name someone who is close to your own age, it is possible that he will also be experiencing health problems and will be unable to serve at the time you need him. If you do name someone of your generation to serve, consider naming a younger individual or a corporate fiduciary as a successor agent who can serve if your primary agent is unable to do so.

**Myth: You should choose your lawyer or your bank to serve as your fiduciary.**

There is no requirement that you name a law firm or another corporate fiduciary to serve. A professional or corporate fiduciary will charge a fee for serving in this role, whereas a family member may serve free of charge.

Note, however, that whoever serves as your fiduciary will be entitled by law to receive a fee for serving, unless you state otherwise in the document. Don't assume that a child or other family member will serve without taking a fee. There is a lot of work involved and personal liability assumed for whomever takes over as your fiduciary.

If you do name a child, friend, or other family member as your fiduciary, we are available to assist and make sure your fiduciary understands her responsibilities and is acting accordingly. However, many people do choose to name this law firm or a corporate fiduciary, especially if none of your friends or family members meet the criteria of a good fiduciary outlined above. We can give you more information about the fiduciary services we offer at this firm if that is something that interests you.

Clearly, there are many factors to consider in determining who your fiduciary should be. With this information in mind, our attorneys and staff can help you reach a decision which meets your particular needs.

*This publication is intended for general information purposes only and is not to be construed as providing legal advice. You must consult an attorney to discuss how the laws apply to your specific situation and how to best implement a plan that will meet your individual goals and objectives. If we can be of assistance in that regard, please call us at (757) 969-1900 to schedule a consultation appointment.*