

ROLES IN ESTATE PLANNING

EXECUTOR

An executor is a person (or company) that you name in your Will to carry out your last wishes and administer your estate. The person that you name in your Will to do this is not automatically an executor. After your death, he or she must qualify and be appointed as the executor by Surrogate's Court, through what is known as a probate proceeding, in order to have the authority to collect and lawfully distribute your assets. An executor has a fiduciary duty to the estate and is held to a very high standard of care. Being an executor is "short term" in the sense that most estates are administered in a matter of months.

TRUSTEE

A trustee is a person (or company) that you name to hold legal title to property and manage that property for the benefit of the beneficiaries of a trust. If the trust is created during your lifetime (this is known as an *inter vivos* trust), your selection of trustee is official once you and the trustee have signed the legal document creating the trust. If the trust is in your Will and is to be created upon your death (this is known as a testamentary trust), then after your death the person you selected must qualify and be appointed as the trustee by Surrogate's Court. A trustee has a fiduciary duty to the trust and is held to a very high standard of care. Being a trustee is "long term" in the sense that the administration of a trust usually lasts for many years.

GUARDIAN

A guardian is a person that you name in your Will to care for your minor child(ren) if both parents die before the child reaches the age of 18. There are two types of guardians: guardian of the person, who has legal custody of the child, and guardian of the property, who is responsible for managing the child's finances. Usually, the same person is chosen to fulfill both roles. (If the child is going to inherit a great deal of wealth, it is advisable to leave that property to the child in trust. In that situation, the trustee will be the one responsible for managing the property for the child's benefit. One of the reasons this is advisable is because you can extend the trust to last beyond the child's 18th birthday, whereas guardianship ends when the child turns 18.) Your selection of a guardian is not automatic. After your death, the person must qualify and be appointed as the legal guardian by Surrogate's Court or Family Court.

POWER OF ATTORNEY

A Power of Attorney is a legal document in which you name an agent (sometimes called your attorney-in-fact) to handle your financial affairs. Your agent can act during your lifetime to sell your property, spend your money on your behalf, sign documents for you, etc. He or she does not need to notify you in order to do these things. You can grant your agent broad power to act in many areas, or you can limit their authority to act in only certain areas. The agent's power ends at your death, or when you revoke the Power of Attorney, whichever happens earlier. Your agent cannot make health care decisions for you.

HEALTH CARE PROXY

A Health Care Proxy is a legal document in which you name an agent to make health care decisions for you. You also give your agent access to your medical records, so that they are able to make informed decisions. Your agent can only make health care decisions for you if your doctor determines that you are unable to make them for yourself. The agent's power ends at your death, or when you revoke the Health Care Proxy, whichever happens earlier.