



One of the most important decisions you will make during the estate planning process is choosing a personal representative to settle your estate after your death. For some, the first person that comes to mind to fill that job is a family member or a close friend. When considering the selection of a personal representative, it is important to have a clear understanding of the full scope and complexity of a personal representative's duties and obligations. Once the duties and obligations are more fully understood, people often recognize that serving as a personal representative is not just an honorary title, but also a complex job that requires special expertise and skill that a professional can provide.

Duties of a Personal Representative

The duties of a personal representative¹ will vary depending upon both the jurisdiction in which you reside and the complexity of your assets and estate plan. These duties often include:

- **Navigating Probate Matters** – Locating and filing the will with the appropriate probate court; providing notice to beneficiaries; securing appointment as personal representative; opening an estate account; preparing and filing an inventory and estate accountings showing all assets, income and disbursements; notifying creditors and settling claims against the estate; meeting with heirs, explaining the probate process and setting expectations for disposition of estate assets; and conducting ancillary probate proceedings in another state if the decedent has property located there.



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- **Collecting and Valuing Assets** – Opening an account for the estate to handle receipts and disbursements; locating and securing all estate assets; collecting bank accounts, investment accounts and life insurance policies; obtaining medical, long-term care, homeowners or other insurance refunds due the estate; obtaining survivor pension or annuity benefits; arranging for date of death valuations and appraisals of tangible assets, real estate and investment assets; and overseeing the transfer or rollover of the decedent's retirement accounts.
- **Tax Matters** – Preparing the decedent's final income tax return, estate income tax return, and federal and state estate tax returns; responding to audits of these returns (note that an estate tax return reporting a tax due generally is more likely to be audited than the average income tax return); and making post-mortem tax elections such as the election to use an alternative valuation date for estate assets, the qualified terminable interest property election for assets passing to a spouse, and selecting a fiscal or calendar year for the estate income tax return.
- **Asset Management** – Overseeing the investment of estate assets during the period of administration; selling or otherwise disposing of real estate assets; and selling or otherwise disposing of tangible assets.

As a result of the breadth and complexity of the duties outlined above, the estate administration process is a lengthy one, with a sophisticated estate taking 18 to 36 months to settle. In addition, it's important to understand that a personal representative is legally responsible for carrying out the decedent's wishes and complying with all applicable laws and tax reporting obligations. Depending on the location of the decedent's assets, this can require knowledge of estate, inheritance or other taxes in multiple jurisdictions.

Choosing a Personal Representative

The duties outlined above give some indication of the complexity of a personal representative's role in the estate settlement process. A family member or friend named as personal representative most likely will have to hire professionals to perform services such as appraising assets; selling real estate, art and tangibles; handling probate filings; managing investments; and preparing tax returns. To ease this burden, the family member or friend might hire a professional to act as his or her agent for coordinating the overall administration of the estate. In this role, the agent will perform those services for which it has the expertise and retain other professionals as needed.

Alternatively, during the estate planning process one might name a professional to serve as the personal representative or co-personal representative with a family member or friend. This approach would relieve family members and friends from the burden of determining the services needed and retaining appropriate providers in the aftermath of a loved one's death. With all of the complexities, and in light of the legal responsibilities and liabilities involved, the choice of a corporate personal representative to serve alone or along with a family member or friend can be a good one. In addition to expertise, a professional serving as an agent or personal representative can provide additional benefits.

Continuity & Expertise

The appointment of a corporate personal representative ensures continuity of service during the entire estate administration process. As noted above, the estate administration process can be a lengthy one to complete. Given this long period of time, the use of a corporate personal representative can relieve an administrative burden on family members who, at that time, may not be able to adequately cope with financial decisions or estate administrative matters.

In addition, a corporate personal representative immediately brings to bear its investment, legal and tax expertise so that it can settle the estate more efficiently and with less risk. A corporate personal representative's knowledge of the legal and regulatory framework governing estate settlement procedures will create a more orderly and efficient estate settlement process. If a problem does arise, such as a tax audit or will contest, a corporate personal representative has the experience and expertise to protect the integrity of the estate plan.

Independence & Impartiality

The settlement of an estate will often involve multiple family members and sometimes extended branches of the family as beneficiaries and interested parties in an estate. Unfortunately, immediate and/or extended family members may not always agree on certain issues, and communication among family members may not be easy or free-flowing. This, of course, may be exacerbated during difficult times following the death of a family member and when dealing with financial matters. A corporate personal representative can often alleviate such problems by being the independent arbiter and by demonstrating impartiality during the settlement of the estate. A responsible corporate personal representative will have regular contact and establish a relationship with interested family members who are beneficiaries of the estate and be available to the beneficiaries throughout the estate settlement to answer any questions and keep them informed on the settlement process. A corporate personal representative brings independence and objectivity and can administer the estate with fairness.

Family Unity

When naming a personal representative, you should consider the impact on the individual who is named. The role of personal representative necessarily requires decision-making, which will affect interested parties in the estate. For example, if real estate must be sold, the real estate broker who is chosen, the marketing plan and the sales price are all decisions that the personal representative must make and, accordingly, are subject to scrutiny and/or criticism by the beneficiaries. When tangible assets must be distributed in equal shares among surviving children, for example, while the value of those shares may be required to be equal, it is the personal representative who often has the discretion as to what specific items beneficiaries will receive. When several people want the same item, such as an individual piece of artwork, furniture or jewelry, the personal representative must deal with this situation fairly.

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Decisions the personal representative has to make are not always easy, and family dynamics may be negatively affected if one child is chosen to serve as personal representative and he or she is solely responsible for decisions affecting other children or family members. For some, the answer to the problem is to appoint multiple children to serve together as co-personal representatives. But this may create another set of issues. If siblings are acting as co-personal representatives and disagreements arise, important and time sensitive estate administration decisions may be delayed. And more importantly, family relationships may suffer. Long-standing family issues can sometimes surface after the death of a parent or family member. This can be a difficult time for a group of family members to work together and seek compromise.

An independent corporate personal representative serving alone or with a family member can be very helpful in these situations and can serve to promote and preserve family unity. The corporate personal representative is a neutral party who can work with all family members toward a resolution of any issues that may surface.

Post-Death Planning

Since there is such a focus on estate planning prior to death, many don't appreciate that there can be opportunities for planning after death. An experienced and knowledgeable personal representative can implement some very effective post-death planning. The use of post-death planning and post-mortem elections can serve to reduce estate and income taxes. For example, a "disclaimer" is a refusal to accept a gift or bequest and can be useful in allowing a beneficiary to redistribute estate property without incurring transfer taxes on the redistribution. The preservation of estate assets for the beneficiaries is a primary duty of a personal representative. An experienced and knowledgeable corporate personal representative who knows how to implement post-death planning can fully maximize those assets passing in accordance with a decedent's estate plan.

Conclusion

At Fiduciary Trust, our Legal Department provides a full range of estate administration services. In many instances, we serve as an agent for family members and friends who are serving as personal representative. More often, however, our clients learn about the issues discussed above while considering their estate plans and decide to name Fiduciary Trust as a personal representative in their wills.

Disclosure: The opinions expressed in this article are as of the date issued and subject to change at any time. Nothing contained herein is intended to constitute investment, legal, tax or accounting advice, and clients should discuss any proposed arrangement or transaction with their investment, legal or tax advisers.

¹ In Massachusetts and many other states, the role of Executor is now called Personal Representative.