

UNIVERSITY OF WASHINGTON RETIREMENT ASSOCIATION

 PRESENTS

THE ROLE OF A PROFESSIONAL FIDICIARY

SPEAKERS

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WHAT WE WILL DISCUSS:

- > What is a Professional Fiduciary**
- > Who do Professional Fiduciaries serve?**
- > Why would you use a Professional Fiduciary?**
- > When should you use a Professional Fiduciary?**
- > How does the process work – How do you engage a Professional Fiduciary? Fees?**



WHAT IS A PROFESSIONAL FIDUCIARY?

- > **Professional Fiduciaries provide financial and healthcare management that ensure their client's dignity and peace of mind.**
- > **They have 4 basic duties:**
 - Act only in client's best interest
 - Manage money, property, healthcare carefully
 - Keep assets separate from their own
 - Keep clear records



WHO DO PROFESSIONAL FIDUCIARIES SERVE?

- > **Seniors**
- > **People with mental and physical disabilities**
- > **Children who do not have a family member with the skills or proximity to manage and protect their money and/or healthcare needs.**
- > **Special Needs Trusts for developmentally and mentally disabled individuals and are also guardians of children.**



WHO DO PROFESSIONAL FIDUCIARIES SERVE?

- > For people with potentially difficult family dynamics, they can serve as an independent third party to keep their clients safe and to protect their assets.
- > They can also help minimize family drama and preserve relationships among siblings and relatives.



WHY WOULD YOU USE A PROFESSIONAL FIDUCIARY?

There are several types of Professional Fiduciary relationships. Each comes with unique duties and responsibilities for the person who requires representation.

- > Fiduciary as Trustee**
- > Fiduciary as Conservator**
- > Fiduciary as Social Security Representative Payee**
- > Fiduciary as Personal Representative**
- > Fiduciary as Agent Under Power of Attorney**



WHEN SHOULD YOU USE A PROFESSIONAL FIDUCIARY?

- > A Professional Fiduciary can oversee the health care and/or finances of someone with impaired mental capacity, such as an elder with Alzheimer's that did not do advanced estate planning.**
- > Family members may agree on a Licensed Professional Fiduciary to act as a court appointed conservator over their elder's person and estate.**



WHEN SHOULD YOU USE A PROFESSIONAL FIDUCIARY?

- > A Professional Fiduciary may be needed in situations of what is called “undue influence” where someone with significant financial resources needs the impartiality of a Professional Fiduciary to make decisions on his/her behalf because of evidence that family members (or an appointed agent) may misuse or take advantage of access to the person’s finances.
- > Financial Elder Abuse
 - In WA, DSHS Adult Protective Services:
 - 1-877-734-6277
 - apscentralintake@dshs.wa.gov



HOW DOES THE PROCESS WORK?

How do you engage a Professional Fiduciary?

- > Professional Fiduciaries are either hired privately or appointed by the court. They are often referred by an attorney who has drafted a trust agreement on behalf of an individual.
- > Professional Fiduciaries can also serve in the capacity of court appointed probate administrators when no prior estate planning has been done, or when the decedent's family members are out of the state or country.



HOW DOES THE PROCESS WORK?

How do you engage a Professional Fiduciary?

- > An elder or disabled person who would like to appoint a neutral individual to manage their healthcare and/or finances can name a Professional Fiduciary in their Power of Attorney documents.
- > In instances where a senior has not named an agent to act on their behalf prior to becoming incapacitated, or in cases where an already appointed agent is misusing or abusing their position, guardianship/conservatorship proceedings can be brought to protect and assist the elder or disabled person.



FIDUCIARY AS TRUSTEE

- > The Trustee has the responsibility of carrying out the terms of the trust as set forth in a trust document.
- > A trust can be created by the language found in a will or a document created during life. If the former, it is a testamentary trust; if the latter, it is a living trust.
- > The trustee is usually a person named by the creator of the trust in the trust document.
- > If there is no named successor trustee who can serve, the court has the responsibility of appointing a trustee, usually someone who is nominated by the trust beneficiary(s).



FIDUCIARY AS CONSERVATOR

- > The person who is legally appointed to manage the Conservatee's estate and/or person.
- > A person is determined by the court to be incapacitated when he or she lacks sufficient understanding or "capacity" to make or communicate responsible decisions concerning his or her daily living needs.
- > A Conservator of the Person is appointed by the court to assume responsibility for decisions regarding the health and welfare of a person.



FIDUCIARY AS CONSERVATOR

- > **A Conservator of the Estate is responsible for the prudent use and protection of the conservatee's assets.**
- > **The conservator is responsible for inventorying, marshaling and managing all assets and benefits belonging to the Conservatee.**
- > **The conservator receives income, pays obligations of the estate, applies for pensions, and organizes data for the preparation of income tax returns and other related duties.**



FIDUCIARY AS CONSERVATOR

HOW IS A CONSERVATOR APPOINTED?

- > **Anyone who believes a person may need help with daily living activities and/or finances can initiate the court process to appoint a fiduciary as a conservator.**



FIDUCIARY AS SOCIAL SECURITY REPRESENTATIVE PAYEE

- > The person designated by the Social Security Administration or other retirement plans to receive the income and pay the expenses of an incapacitated individual.**



FIDUCIARY AS PERSONAL REPRESENTATIVE

- > An individual appointed by the probate court to administer the estate of a person who has died. A personal representative will either act as an Executor if named in the will, or as an Administrator if not named in the will, or if there is no will.**
- > The personal representative inventories and safeguards assets, collects income, verifies and pays obligations, identifies and notifies heirs and beneficiaries, and distributes assets.**



FIDUCIARY AS AGENT UNDER POWER OF ATTORNEY

- > The responsibilities of a fiduciary acting as an Agent under Power of Attorney include the following:**
- > For health care, the fiduciary acts as attorney-in-fact to make health-care decisions, including placement, medical, treatment and final burial arrangements.**
- > For financial matters, the fiduciary conducts personal and financial business pursuant to the client's written instructions.**



FEES

In Washington, the estate executor is known as a "personal representative."

> In determining executor fees, the state of Washington uses the commonly accepted principle of "reasonable" compensation and says nothing further in the law. However, there are slightly more detailed rules for professional lawyers that provide a bit more insight into the meaning of "reasonable", including:

- Nature of the work involved (time, effort, difficulty, skills required)
- Compensation customarily charged (in the community for similar services)
- Size of the estate (and the results obtained)
- Any time limitations
- Experience and capabilities of the person
- It's common in WA to use a "services-rendered" approach, and bill by the hour (the hourly rate can be determined according to the factors above). Executors have also traditionally set fees as a percentage of the overall estate value, but while this is common (and mandated by law) in many states, it is somewhat unusual in WA.



FEES CONTINUED

Compensation of Personal Representatives in King County currently appears to be as follows:

- > The proposed rates generally range from approximately \$15 to \$50 hourly, more or less depending upon the Representative's skill and experience.**
- > The Court usually approves them as proposed unless an interested party objects.**
- > One rule of thumb in setting compensation is to provide a rate that is comparable to the rate of compensation that the Representative is paid at his/her regular, full-time job.**



Q & A

THANK YOU!

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