

Who are these people and *what are they doing in my My Estate Plan?*

By: Douglas G. Goldberg, Esq.

Contrary to popular belief, effective estate planning is not a simple, one-time event. It is a complex and ever-changing process that involves several areas of law. Additionally, the participants involved and the tools used are many and varied, and they differ from family to family, depending on your planning goals.

In order to ensure your plan works the way you want, several things must happen. First, your planning documents must be legally and technically correct. Secondly, your assets must be titled correctly and your beneficiary designations properly named. Finally, the people you choose to act on your behalf must be trustworthy and properly trained to carry out the tasks assigned to them.

So, Who's Who?

The people involved in estate planning fall into three basic categories. Here's an overview.

I. The Principal

There is the principal—that's you—the person who names someone to act on your behalf in a particular circumstance. The authority and control that you give someone is documented in a written agreement. As the principal, you can play several roles. The most common are: **Trustmaker, Grantor, Settlor, or Trustor**, a person who creates a trust. The **Testator** (male) or **Testatrix** (female) is the person who makes a will. And the **Initial Trustee** is the person initially named to administer a trust. In a revocable living trust, the Trustmaker is usually an Initial Trustee. A **Principal under Power of Attorney** is a person who gives specific authority to someone else (the Agent) to perform acts for him or her by signing a written power of attorney.

II. The Fiduciaries

Then there are the fiduciaries. A fiduciary is a person who agrees to act on a principal's behalf. A person may serve in more than one fiduciary role, each of which involve following several important and stringent legal responsibilities and guidelines. Some typical fiduciary roles are: **Disability Panel Member**, a person named to help determine whether you are competent to manage your own medical and financial affairs. No financial or medical decision-making authority is given to someone serving in this capacity. **Health Care Agent** is a person named to manage your medical affairs and make medical decisions for you. Likewise the **Financial Agent** is a person named to manage your financial affairs and make decisions regarding your finances and assets.

Other fiduciaries include: **Guardian**, a person nominated in a power of attorney or appointed by the Probate Court to take care of your day-to-day personal needs. This person also typically acts as your Health Care Agent. A **Conservator** is a person nominated in a power of attorney or appointed by the Probate Court to manage your finances and assets. This person also typically acts as your Financial Agent.

A **Personal Representative** is the person appointed by your Will to handle the probate of your estate upon death. The primary functions of a personal representative are to pay your bills and transfer assets into testamentary trusts or distribute them to your named beneficiaries. A **Successor Trustee** is a person or entity that takes the place of another trustee, normally due to the initial trustee's disability, incapacity or death. And a **Trust Protector** is a trusted professional, generally an attorney, who is given powers to amend the terms of the trust due to constantly changing legal, tax, family and economic circumstances. Trust pro-

tectors provide increased flexibility in trust administration.

III. The Professionals:

Effective estate planning involves the efforts of a team of experts in their individual disciplines who come together to help in the design and implementation of your plan. Professionals include: An experienced **Estate Planning Attorney** understands the many issues, circumstances and planning options available when tax law, your family relationships, Medicaid issues and property law intersect. The attorney will counsel on the available options for your particular situation and draft your legal documents. Without expert legal guidance, your plan could become no better than the paper on which it's written. Paralegals and other legal assistants may also be involved to transfer title on assets and change beneficiary designations to ensure your plan works correctly.

Certified Public Accountants or CPAs prepare the accountings and income tax filings, and can be very effective in performing tax research and providing the team with unique insight into your business and family. The **Insurance Professional** keeps abreast of the new products that are continually being created by insurance companies. This person provides the products that many times are the "fuel" for the estate planning vehicles and will also help with re-titling assets and changing beneficiary designations as required. And **Financial Planners** are of considerable help in providing financial strategies for management of assets before, during and after death. Some financial planners may also provide insurance services and products. **§**

Leaving a legacy of value takes work and it takes commitment—from you, your advisors and your fiduciaries. When you're ready to talk, we're ready to listen. Call Goldberg Law Center at 719-444-0300.

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Douglas G. Goldberg, Esq.

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