

Who Should You Choose As Your Executors, Agents, and Trustees?

By Jane M. McNamara, Attorney

Most people have clear ideas about what should happen if they are sick or incapacitated, and who should receive their property upon their death. However, many people are confused when choosing a person to serve as trustee, personal representative (what we used to call an “executor”), and agent under health care and financial powers of attorney.

When naming someone in your documents (a “fiduciary”), there are some important considerations. **First**, choose someone who you trust, and who will act appropriately. It doesn’t matter whether the chosen person was your first-born or your youngest – they must be perform their duties honestly and correctly. **Second**, you can appoint persons who live out of state. With e-mail, fax machines, overnight delivery and other communications options, there is typically no problem in naming someone who lives in a different state. However, we generally believe that the ideal health care agent should live near you. Reviewing medical records, talking to doctors, and developing a clear picture of your condition is much easier for someone nearby. **Third**, you can name multiple fiduciaries. For example, you can name both your children to act together as co-trustees, co-agents, etc. However, to the extent that you are trying to avoid family disputes, it is our experience that giving everyone equal authority tends to encourage disagreements. You might want to name your daughter (the banker) as financial agent, and your son (the doctor) as health care agent — and each as back-up to the other. If you really want to give them joint authority, though, there is no legal reason not to do so. **Forth**, we encourage you to share your estate planning documents with those you name as your “fiduciaries”. There is no legal requirement that you do so, but it does increase the likelihood that any problems can be worked out while you are still alive, competent and in charge of your own decisions.

For more information, please call the Law Office of Jane M. McNamara at (661) 287-3260.