

Manuals of Instruction

Now that we have covered the documents you'll encounter and how to think through whom to name as fiduciaries, let's connect these at a level deeper than traditional planning.

This is a critical topic to request of your Estate Planning or Elder Law Attorney. In order to minimize the burden that assigning the role of fiduciary creates, a manual of instruction is needed—and it should come from you! This can be written and codified right into your legal documents.

Let's take a look at some key areas to map out.

Care Management Provisions

When you become incapacitated, your agents will step in to handle your care, whether that means caring for you themselves or establishing care by someone else. The problem is... it is likely that your agent will have neither the skills nor the know-how to ensure you are cared for properly.

To this end, you should think about including provisions in your Power of Attorney and Safe Harbor Trust that guide your agents toward hiring the aid of a Geriatric Care Manager. This trained person will be able to assess your situation and guide your agents in providing proper care.

This role is covered in the Financial chapter as well. Here we emphasize that you can direct

your fiduciary to call a specific Geriatric Care Manager if you fall ill, and name them right in your legal documents.

Bar against Guardianship

Even though one of the main reasons to draft your Power of Attorney is to have a say in who provides your care, sadly it may not always be the case. Guardianship proceedings (where the court becomes involved in who handles your affairs) may be forced on your agents by disgruntled relatives or professional services who cite your best interests but, in reality, are looking out for themselves. You can include provisions in your Power of Attorney that make it very clear you trust your named agents over outsiders.

Prohibitions

Your Power of Attorney can include provisions that prohibit your agents from signing voluntary arbitration agreements. Arbitration agreements are documents that forfeit your right to sue a housing facility in situations of negligence or inaction that lead to your injury. By including provisions with specific instructions for this situation, any arbitration agreement your agents may sign to get you accepted into a facility become invalid. Your agent can still sign the entrance application like normal, but if a situation should arise later that necessitates litigation, this provision would allow you and your agent more options to fight for your rights.



Professional Resources

One of the main failings of a traditional Power of Attorney document is that while it is intended to ease the burden on your loved ones, in most cases it lacks the guidance to follow through on that benefit.

You can, and should, include in your Power of Attorney provisions and specific, detailed guidance as to whom your agents should work with when dealing with your affairs. This can include the following professionals and services:

- A Geriatric Care Manager
- Your Financial Planner
- An accountant or bookkeeper to aid with taxes or bills
- A property manager
- A specific Geriatrician
- Your online banking accesses
- Your funeral arrangements, which we strongly encourage you to prepay

By doing this, you take away much of the legwork that your agents need to do to carry out your wishes and provide you with the care you both need and want.

Your list should also include backup professionals. Remember that your agents may not use this list until many years from now. What if one of the professionals on the list

has retired or gone out of business? It's a good idea to include one or two backups for each category.

Compensation

Ensure that your agents and loved ones are fairly compensated for their time and effort. It can be disastrous to assume that they do not expect any compensation because of your relationship. While this may be true at first, by not compensating them you will more than likely burden them financially, socially, physically, mentally, etc. Do not take your agents and loved ones for granted; ensure that they are properly compensated.

A good starting point is to understand what a professional fiduciary would cost. You do not

need to provide the same level of compensation, particularly since a loved one is not likely a professional in this area, but this helps give you one way to start thinking of what this amount might be.

Alternatively, in some families there is a home that might make sense to gift in its entirety to the fiduciary, while the rest of the heirs split everything else. There are several ways to accomplish this, so work through your unique circumstances with an Estate Planning or Elder Law Attorney.

