

What is a Professional Fiduciary?

A GUIDE FOR CONSUMERS

A Professional Fiduciary is an individual who is entrusted property or power for the benefit of another. He or she serves vulnerable populations, such as the elderly and those who can no longer care for themselves, and is a neutral and objective party that provides overall care for a client. If an individual becomes incapacitated or dies, a Professional Fiduciary can take care of managing an estate. He or she can also serve independent, productive people who need assistance in making sound financial, health care, and day-to-day decisions.

What kinds of services can a Professional Fiduciary provide?

- Banking and bill paying
- Cash flow management
- Daily care and housing needs
- Estate management and administration
- Fiduciary accountings
- Tax preparation and payment
- Household upkeep and maintenance

Plus, the management of certain services, including:

- Medical care needs
- Assets and distribution
- Insurance needs
- Investments
- Public benefits
- Real estate and personal property

A Professional Fiduciary may not be an expert in all areas and may hire other professionals to handle some needs at the expense of the trust or estate. However, the Professional Fiduciary is the manager over all services provided. If he or she hires another professional, the responsibility to provide appropriate and adequate services falls on the Professional Fiduciary, and he or she is the ultimate decision-maker while following your or the court's instructions.

Remember

It is a crime for Professional Fiduciaries to practice without a license.

Why hire a Professional Fiduciary?

- You do not have friends or family to help in handling your affairs.
- You want to avoid possibly burdening family or friends.
- Your trusted friends and family members may not have the right skills, not be willing to assist, or live too far away to help.
- Your relatives have conflicts between them that make choosing a neutral party a better choice.
- You are seeking an experienced, qualified professional to act as an advocate for you, no matter what stage of life you're in.

What does the Professional Fiduciaries Bureau do?

The State's Professional Fiduciaries Bureau (Bureau) licenses and regulates Professional Fiduciaries and was created in 2007 under the Department of Consumer Affairs. Protection of the public is the Bureau's highest priority in exercising its licensing, regulatory, and disciplinary functions. The Bureau is responsible for reviewing and investigating consumer complaints and can also investigate potential licensee misconduct on its own initiative.

As of January 1, 2009, any person who acts as a fiduciary for a nonfamily member must be licensed by the Bureau. Courts cannot appoint an individual to act as a Professional Fiduciary for nonfamily members, unless the individual holds a valid Professional Fiduciary license or is exempt from licensure by law.

What are the different types of fiduciaries (regulated by the Bureau)?

Trustee

A Professional Fiduciary serving in the capacity of a trustee has the responsibility of carrying out the terms of the trust as stated in the trust document. The trustee is named by the person who created the trust. The creator of the trust or "trustor" may name a family member, a friend, or a Professional Fiduciary to be trustee in the event he or she is incapacitated or no longer living. In some cases, there is no trustee available or no trustee named in the trust; in this instance, the court may appoint someone to serve as trustee. There are sometimes legal or tax reasons to name a Professional Fiduciary as trustee.

Guardian

A Professional Fiduciary serving in the capacity of a guardian provides management over the financial and personal affairs of minors (person under the age of 18). Although your estate planning documents (consult with an attorney to draft these documents) may name a specific person to act as a minor's guardian, the guardian must seek the court's permission to create the guardianship.

Conservator

A Professional Fiduciary serving in the capacity of a conservator provides management over the financial and personal affairs of individuals who can no longer make or communicate safe or sound decisions about their person and/or property or has become susceptible to fraud or undue influence. Although your estate planning documents (consult with an attorney to draft these documents) may name a specific person to act as a conservator, the conservator must be appointed by the court to create the conservatorship.

Agent Under Durable Power of Attorney

A Professional Fiduciary serving in the capacity of an agent under a durable power of attorney (POA) is an individual entrusted to act as your agent for either your financial and/or health care matters in the event you become incapacitated. If you want to choose one person to speak for you on health care matters and someone else to make financial decisions, you can do separate financial and health care powers of attorney. Your POA should set forth the specific decisions you want your agent to control such as medical care decisions, public benefits, individual retirement accounts, and Social Security payments.

Personal Representative of a Decedent's Estate

A Professional Fiduciary serving in the capacity of a personal representative of a decedent's estate handles the administration and distribution of your estate once you pass away. This individual may be named in your Will or estate planning documents (consult with an attorney) and may need to be officially appointed by a court depending on the value of the assets in the estate, in accordance with California probate laws.

How can consumers protect themselves?

Before you hire a Professional Fiduciary, verify he or she is licensed. To verify a license, go to the Bureau's website, www.fiduciary.ca.gov. Through the website, you can do searches by using a fiduciary's name, license number, city, or county. You can also view any publicly available disciplinary information on the website. In addition, follow these tips:

- Write down your expectations for your estate, finances, health care, and end-of-life wishes. This may mean creating an estate plan and consulting with an attorney to complete the necessary documents.
- Plan ahead for your needs and your family's needs.
- Consider referrals from family, friends, or another professional.

