

## Estate Planning: 5 Tips to Pick Trustees, Executors and POAs

The decisions on who would be best to carry out your wishes aren't always clear-cut, and it's easy to make a mistake. So before you name the agents for your estate planning documents, take these five tips into consideration.



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Making sure that your estate planning documents are implemented as early as possible is extremely important. One of the biggest challenges that clients encounter during the process is deciding who to appoint as their trustees, powers of attorney, health care surrogates and executors.

Below are some practical tips to help guide you in your decision making.

### **1. Give preference to those who have the most time to devote and live nearby**

Lots of my clients have very accomplished children who are successful business owners, professionals or leaders in their trade or occupation. The most successful people might not always be the best choice since these individuals sometimes run tighter schedules and have less time to devote to helping you with your affairs than others. In addition, maybe certain children have more kids and other obligations than others. This is important to take into account.

Additionally, give preference to people who are closer in proximity to you. It is certainly easier for them in terms of being your power of attorney and health care surrogate. However, being nearby can matter less for trustees and executors.

## **2. Do not make arbitrary designations**

Another mistake I see a lot is selecting an individual based on arbitrary characteristics. You see this a lot when someone appoints a particular child just because they are the oldest. Perhaps there is one son or daughter, and they appoint that person based on gender.

Selecting an agent is very important. There are a lot of factors to consider, but you should not select individuals based on these arbitrary factors.

## **3. Avoid naming multiple agents, when possible**

A lot of my clients want to make sure none of their children feels left out, so they want to appoint all their children to every position possible. This, more often than not, leads to deadlock or discourse once decisive action is necessary.

For example, I had a client who recently came back to me to change his documents after he had appointed his three children all as co-agents and trustees. He realized that such action would lead to great disagreement among them, and as a result, timely action would be difficult. Three "Type A" personalities made it hard for them to agree, as each of them wanted to lead.

Therefore, avoid multiple agents when you can, unless you are sure everything will run smoothly.

## **4. Pick the best agent for today**

I counsel a fair number of younger clients and clients without children. They always have the most difficulty because the answer as to who will be their agent is certainly not as obvious and can be more complex. If you are appointing an agent who is older, maybe that person dies or becomes incapable of acting when you need them. If you appoint a friend, maybe that person isn't a friend in the future.

I always tell my clients to appoint the best person for today. You can always make changes to agents, trustees and executors in easy fashion.

## **5. Consider a professional trustee or fiduciary under certain circumstances**

In some situations, appointing a professional or institution as a trustee is the best route to take. If you have one beneficiary whose share of your estate has to be held in further trust so they are not getting their inheritance all at once, you should consider the above. Otherwise, discretionary distributions may be left up to family members, and that could create an adversarial relationship between them that might have not previously existed.

Also, if you are of substantial wealth or have generational trusts, professionals and institutions are better suited to deal with those issues and manage those types of complex trusts for the beneficiaries. I understand fees for these services can be substantial, but they are worth it under certain circumstances.

The estate planning vehicles themselves are important to have. However, the documents and plan are only as good as the agents you appoint. The agents are the real drivers of whether or not a plan is successful. Therefore, making the right choice is essential.

Use the tips above to help guide you, and certainly speak to a professional estate planning attorney and get their opinion on your specific situation as well.

**NYSUT NOTE: Are you interested in estate planning, but not sure where to start? Check out the NYSUT Member Benefits Trust-endorsed Legal Service Plan, which provides legal assistance for things like preparing crucial estate planning documents. Provided by the law firm of Feldman, Kramer & Monaco, P.C., this plan offers unlimited access to toll-free legal advice from a national network of lawyers. For more information or to enroll, [click here](#).**

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