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## **THE REGISTER CITIZEN**

OPINION

# *Today's Business: What do you need? Guardian? Executor? Trust?*

*Christine M. Tenore*

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*Christine M. Tenore; Contributed photo*

*So, you've had your first child and one day you ask your spouse: What happens to the children if we die at the same time? Who will care for them? How will their expenses be paid? What about college?*

*Or maybe you have an adult child who is incapable of managing money, or suffers from an addiction.*

Most of us have heard about "executors." But what exactly does an executor do? Who has the legal authority to manage the income and assets in each of these situations and what is the role of each?

Each of these scenarios requires someone, called a “fiduciary,” to manage another’s finances. A fiduciary is generic term for a person who has the duty to act in a way that will benefit someone else, usually financially, and must act with good faith, trust, confidence and candor.

The fiduciary to manage your minor children’s financial welfare, if you are unable, is called a guardian. You can designate who you would like to be the guardian of your children in your last will and testament, but the actual appointment happens in Probate Court after you pass away. The guardian has authority over all aspects of the minor child’s life including medical care and paying school bills. Since the Probate Court appointment may not be scheduled for a month or so after your death, you also can name a “stand-by guardian” to act immediately upon your passing — until the court appoints a permanent guardian. Once the child is 18, however, a guardian’s authority generally lapses.

But what about your desire to manage an adult family member’s finances due to his/her inability or incapacity?

In this case, you may want to create a trust to hold funds for the benefit of that person and name a trustee as the fiduciary. Depending on the terms of the trust, the trustee has discretion to distribute income and principal from the trust to the “beneficiary,” the adult family member. The trustee has responsibility for the assets in the trust and again is held to a fiduciary standard of duty. The trustee can manage, improve, control and invest all real and personal property.

An executor is named in your will as the fiduciary who will manage the administration of your estate when you pass away. The executor is obligated to carry out your directions regarding the distribution of your estate according to the terms of your will. The Probate Court judge oversees all of the executor’s actions, ensuring that the individuals that you want to inherit your estate actually receive their inheritance. The executor’s duties include filing all of the necessary documents with the court, keeping the beneficiaries informed, harnessing the assets and creating an inventory, paying the deceased person’s debts, selling the decedent’s house, if necessary, filing and paying estate taxes and distributing the net estate to the named beneficiaries.

Under either Connecticut law or the individual documents, a fiduciary can be paid for services. The choice of a fiduciary must be considered carefully, taking

into account the scope of the role, the skills and abilities of the fiduciary, the size of the estate, and the willingness of the proposed fiduciary to accept the responsibility. It is a critical to name someone who is reliable and trustworthy and willing to act honestly and not show favoritism to any of the beneficiaries or heirs. You also have the option of naming an institutional corporate fiduciary, but most corporate fiduciaries will charge a fee — often a percentage of the value of the estate or trust.

Estate planning often involves naming one or more fiduciaries — a guardian, trustee and/or an executor. The role of each is different depending on your planning goals and needs. Once you identify what you want to accomplish, you will be better able to determine which fiduciary will achieve the results you are expecting.

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