Retirement Daily

Your Money

An Unexpected Retirement Activity: Serving as a Financial Fiduciary

By Retirement Daily Guest Contributor | Oct 3, 2019 7:41 AM EDT

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Most folks think about using the time leading up to retirement and into the early years of their retirement as a time to develop the activities and hobbies that they will enjoy for the last phase of their lives. In fact, we encourage our clients in their retirement preparation phase to become proficient at the activities and hobbies they plan to enjoy in retirement so that they will not waste time or frustration developing those skills once they stop work.

By choice or not, another activity we often find many of our clients in during this "retirement red-zone" is spending considerable time serving as a financial advocate for a family member or friend who can no longer handle their own financial affairs.

While sometimes this is for a special-needs adult child, it is most often a parent or an older adult family member, friend or neighbor. We call the responsibility of handling the financial affairs for another person becoming a financial fiduciary.

Designating a Financial Fiduciary

Durable Power of Attorney (General/Financial) -- A fiduciary in this capacity is given the power to handle the financial affairs for the other person. No formal reporting is required, but it is always a good practice.

- Durable Power of Attorney typically gives you the broad powers to act on another's behalf to handle their financial affairs once enacted and ends upon death. Durable powers of attorney can be either immediate or springing. You can become someone's durable power of attorney immediately upon their signing the document or by "springing" -- when a person is determined to be incapacitated as defined in the document.
- Special Power of Attorney gives you the authority to act on another's behalf for a specific period of time or for a specific transaction.

Trustee of a Trust -- Either upon the person's voluntary resignation or more often when they become unable to handle their own affairs due to incapacity, a trustee/fiduciary is named to handle the management of the revocable, or sometimes, irrevocable trust of the person you are serving, and to manage the assets within the trust for their health, welfare and benefit, as the trust is written. No formal reporting is required but is a good practice

Conservator -- This is a court-appointed financial fiduciary appointed when someone is declared unable to handle their own financial affairs and has not put a durable power of attorney in place for themselves. The position requires a duty to make decisions in the best interest of the person you are serving and to report to the court on an annual basis.

Designated Payer -- This is generally the same person as the Conservator or the Durable Power of Attorney, but requires separate assignment and is specifically for government benefits (Social Security, Veterans Administration benefits, etc.) and insurances, i.e. long-term care insurance. Annual reporting is required for government benefits.

Executor -- This can be a named position or one assigned by the court, depending on whether the deceased left a valid will. While all other assignments are during the life of the person one might be serving, the executor is the fiduciary that settles the deceased's estate outside of assets in trust or assigned by beneficiary or deed after death. The executor is responsible for handling the settlement of the estate, including bequests as directed by the will or by the probate court if the estate is left intestate (when there was no will left by the deceased).

All financial fiduciaries, no matter what the specific role, have four main legal responsibilities:

1. To act in the protected person's best interests at all times
2. To manage the person's money and property carefully
3. To keep the person's money and property separate from your own.
4. To keep good records.

For specific guides and guidelines for each financial fiduciary role, go to the Consumer Financial Protection Bureau Guidebooks for Managing Someone Else's Money.

Being named as a financial fiduciary for another person can be a huge responsibility (and it likely comes with other caregiving roles if you are an adult child of an aging parent, so hang tight!). Planning ahead and being as prepared and as organized as possible helps make things less overwhelming, if that is possible. Here are some key steps to getting started once you find out you've been named as the financial fiduciary for someone.

Gather and organize important information and documents (this includes the legal documents that appoint you as the fiduciary.)

Use an organizing document to keep everything in order and recorded not only for you, but for anyone else who might have to take over for you if you are not available. A document like a Personal Record Keeping System can help.

Keep copies of important legal documents with you at all times (trustee appointment, durable power of attorney appointment, etc.). Technology now allows these to be carried via cloud-based applications, flash drives, etc., instead of in paper form.

If you are getting involved with a parent and a power of attorney or successor trustee has not yet been put in place, consider getting the following agreements put in place to assist you in the meantime (all will require the person's signature, so the person will still need to have the capacity to sign):

- A Limited Power of Attorney to act on investment accounts
- Authorizations to call on insurance policies
- Authorizations to discuss the financial situation of the person you are serving with their professional team of advisers (CPA, attorney, financial planner, etc.)

Once the person you are serving chooses to invoke the power of attorney/trustee powers or they are determined no longer able to handle their own financial affairs, you will need to get the power of attorney/successor trustee invoked by the estate planning attorney and get the updated paperwork on file with the appropriate financial institutions.

You also will need to get appointed as the designated payee for any government benefits (Social Security, Veterans Administration, etc.)

Once you have all of your documents in place, powers in place, and titling up to date, you should be ready to serve. In addition to the four legally imposed responsibilities of a financial fiduciary, there are a number of specific action items/duties that come along with executing the role (this is not an all-inclusive list):

- Paying bills and reconciling bank statements
- Filing income taxes
- Paying property taxes
- Maintaining financial records
- Filing for government benefits and the annual reporting
- Working with financial advisors and managing the investment policy statement (oversee risk, fees, etc.)
- Work with an estate planning attorney to make sure legal documents are followed
- Act as an advocate in all financial affairs (real estate transactions, credit/debt issues, etc.)
- Act on behalf of the person you are serving to make sure insurance premiums are paid and benefits are received, as appropriate
- Interface with all financial professionals, as needed

And if all of that isn't enough, there are some additional issues to note when you are a financial fiduciary, especially when the person you are serving is incapacitated.

Financial fraud and abuse are a huge issue, especially for someone who might be particularly vulnerable. The hope is that once you are on the scene there is limited opportunity for the older adult to provide methods of payment to someone who might be trying to financially victimize them (if you are handling their financial affairs). However, as we have seen in the news and within our own practice, when people are vulnerable and when the bad people out there have a will, there is a way.

Protecting Against Fraud and Abuse

Signs of Financial Fraud or Abuse:

- Failure to pay bills (if they are still paying their own bills). They may have been scammed out of money and cannot afford to pay their bills.
- Failure to buy food or medication
- Large amounts of money transferred or withdrawn that is not typical

- Missing personal property/belongings
- Isolation from friends/family (embarrassment about what has happened)

How to Stop Financial Fraud/Abuse:

- Pay attention to the signs
- Educate the senior you work with and their caregivers
- Advise older adults about who to contact if they suspect fraud
- Stay knowledgeable about resources and current scams
- Report scams and abuse to the proper authorities: Federal Trade Commission (1-877-382-7357), FBI and local police

Aside from being worried about handling funds, filing taxes, working with professionals, annual reporting, and keeping money from being stolen by fraudsters, what else should you be worried about? What about longevity and long-term care? Do you have a handle on the person's overall financial picture and will they be able to pay for their care should they have a longer than normal life expectancy or encounter a serious medical issue? Is there a plan in place to pay for care? Will they qualify for government benefits and is their legal planning in place to allow them to qualify? If it is your parents that you're serving, might any of this impact your own financial picture?

While these are questions you need to ask yourself as you sit in the seat of the financial fiduciary, the best advice is to plan ahead as much as you can in anticipation of the role and the potential circumstance. Before your parent or the adult for whom you care gets to the point at which they begin to have health or mental issues ask them the difficult questions about their plan.

Know what their financial situation is and how they plan to pay for care in the long term. Understand what your role will be in the process.

The more you know about the situation, the better you can be prepared for and plan comprehensively for your own retirement and aging situation -- mentally, emotionally, and financially.

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