

Why Hire A Private Professional Fiduciary?

By Lindsay Leonard,
Licensed California Professional Fiduciary

Lindsay Leonard, a California licensed private professional fiduciary, has continuously offered her services to the public for the last 10 years. In that time, she encountered many situations where families struggled with their own internal dynamics during periods of rapid, cumulative changes. Those shifting components led her clients to seek outside assistance, which eventually brought them to Lindsay.

According to California Civil Jury Instructions published in 2017, a fiduciary relationship is “any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party.” This is the central core of the relationship between a private professional fiduciary and her clients.

Private professional fiduciaries provide critical services to seniors, persons with disabilities, and children. They manage matters for clients including daily care, housing and medical needs, and also offer financial management services ranging from basic bill paying to estate and investment management.

There are several reasons why it might be time to hire a Private Professional Fiduciary. Consider the possibilities:

1. Aging parents who are increasingly debilitated, with adult children who remain gainfully employed and who may yet have their own teenaged children at home and full lives; they may also live/work significant geographic distances from where the aging elders are located (the “sandwich generation”).
2. In creating one’s own estate plan documents, there may be a desire to share out responsibility among multiple children so as not to appear to favor one or another, but by designating co-trustees or co-agents under a power of attorney or health care directive to act concurrently instead of consecutively, it creates opportunities for disagreement and impasse, where nothing may be accomplished. It can be a source of friction and litigation in conflicted families. At the very least, if one names the children jointly, it may become cumbersome to get all signatures required for all actions taken. If more than one serves, a tiebreaking mechanism must be written in. Also, though many family members and friends will waive fees for serving as trustee, most trusts provide for “reasonable compensation,” which also may be of concern to other beneficiaries.

Fewer have problems with employing the services of an independent, outside and objective third party – especially one identified as a private professional fiduciary.

3. Alternatively, someone creating an estate plan may not desire to name a family member, or lack a close relative or trustworthy and reliable party to designate as successor trustee, executor, health care agent and attorney in fact.
4. Married couples typically have a non-incapacitated spouse serve as fiduciary during the other spouse’s incapacity and as sole trustee of all trusts created after the first spouse’s death, even if those trusts were designed to ultimately protect the deceased spouse’s assets for his or her beneficiaries (such as children from a prior marriage). When trusts are created for such control purposes, in blended family situations, couples may want to consider having someone other than the surviving spouse serve as trustee, or having the surviving spouse serve with a co-trustee. Only in friendly families should the trustee or a co-trustee who serves with a surviving spouse be a remainder beneficiary, because any funds distributed to the surviving spouse will reduce the remainder beneficiary’s ultimate distribution. Otherwise, a conflict of interest may arise, which has spawned considerable litigation in blended families.

A good private professional fiduciary can bring experience, organizational skills, and objectivity while providing and maintaining a personal relationship that likely would not exist with a corporate trustee, such as a financial institution.

California is one of the few states that license private fiduciaries. (California Business and Professions Code, Section 6500-6592, California Code of Regulations, Section 4400-4622) While being licensed is a requirement, it may not determine whether a fiduciary is a good fit for your particular circumstances and family dynamics. It’s always recommended that you meet with and interview three private professional fiduciaries to present a list of questions addressing your needs to ensure that you find the professional who best suits your requirements.

Lindsay Leonard is the founder and owner of Santa Barbara Fiduciary. She has been a licensed California Professional Fiduciary since 2010 and has certifications in Professional Fiduciary Management for Conservators and Trustees.



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