

Serving as an Agent or Fiduciary

Thank you for agreeing to serve. It is great that you have given your time and effort to help someone out. You do not have an easy job.

One reason your job isn't easy is that most attorneys have not made it easy for you. When attorneys draft documents, the most important questions for them are usually of the following sort:

- ❖ Have I drafted something that is legally correct, in case a judge ever has to make a ruling?
- ❖ Have I kept my client out of trouble with taxes and similar matters?
- ❖ Have I correctly expressed what my client told me?

It is rare for nearly as much attention to be paid to other questions such as:

- ❖ Have I given any suggestions or advice about how an agent is supposed to use this document?
- ❖ Have I given any practical advice about what to try in case there are problems?
- ❖ Have I written something that can really be used by ordinary people?

There are good reasons why these questions aren't considered often enough. In our training, attorneys are much more likely to learn about legal disputes than practical difficulties. We end up producing something like pass keys. They enable agents to do things, but give no guidance how. No one would simply hand over keys to a car to a teenager without requiring drivers education first and having a manual in the glove compartment. Children and other agents often learn that they are supposed to act for their parents or other relatives without receiving more than the pass key.

In planning for clients, I think it is critical to make sure that they and their agents are providing with usable materials and information. Ideally, I like to talk with agents after the documents have been drafted. Although it is important to make sure that the client understands documents, the client probably won't be able to explain them to agents, because the agents generally do very little unless the client is incapacitated or dead. The documents are used by the agent and the agent is the one who needs to understand.

A second reason that your job isn't easy is that there are liabilities. An agent or fiduciary can get into serious legal trouble by breaking rules, even if the rule wasn't known. In particular, agents handling finances may face charges of financial exploitation if they violate certain rules or don't keep good enough records.

If you need assistance in learning what to do, what not to do, how to show that you are acting properly, and generally solving problems efficiently without getting into trouble, an attorney with knowledge of the law, with an ability to explain things clearly, and a practical knowledge of the risks is one of the best ways to protect yourself. Other information on this website gives some indication of my

legal experience. I have also spend many years developing and conducting training programs, so I have demonstrated expertise in how to explain things in a usable manner.

Prevention is almost always better than a cure. If you are at all unsure of what to do and what to avoid, contacta qualified attorney first.