

Be Aware of Your Responsibilities BEFORE You Say “Yes”

It can be flattering to have a family member or good friend request that you act as a trustee, executor of their will, healthcare proxy or even grant you their durable power of attorney. Before you blindly yield to flattery and say “yes,” some serious conversations and fact-finding need to occur.

All of these titles bring with them some weighty obligations, duties and potential liabilities. While assuming those responsibilities can be necessary, honorable and worthwhile, you should enter into the agreements armed with knowledge and clarity.

For example, being named a health care proxy gives you the power and responsibility to make medical care decisions and possibly even end-of-life decisions. Before you do so, here are a few guidelines:

- **Be able to say “no.”** While you want to help someone you care about, make sure you have the emotional strength to cope in such a taxing situation. If you know you can’t, it might be best for all involved if you decline.
- **Talk it over.** By definition, a “proxy” should make decisions based on the wishes explained in the legal documents establishing the proxy. Discuss religious and moral beliefs, and don’t be afraid to ask the tough questions.
- **Get access to medical records.** You should have a clear understanding of the loved one’s condition and what treatment options are available. A HIPPA form should be included.

While not as emotionally charged as the health care proxy, other legal assignments such as Attorney-in-Fact under a Durable Power of Attorney, Trustee or Executor are accompanied by serious responsibilities. Before you assume the responsibility, you need to review the documents. There are obligations, duties and potential liabilities. The goal is to avoid problems upfront.

When a friend or relative establishes a trust and asks that you be the trustee, there is plenty of homework to be done. It is important to understand the wishes expressed in the trust, but also the responsibilities under the law that might not appear in the trust documents.

Some trusts might seek to withhold certain information from the beneficiaries, most likely if there are children involved. The intent might be to prevent fighting in advance over inheritances, or possibly to encourage children to work toward their own financial independence.

Either way, once beneficiaries reach the age of 25, they have the legal right in Texas to request documentation of all trust assets, expenses and activities, including the compensation (if any) of the trustee.

The same logic should be used in responding to a request to be the executor of a will. While the contentious or unusual ones make for interesting movies and stories, the ones that are planned and well thought-out remove most of the drama and make the disposition of assets as smooth as possible.

At Winn, Beaudry & Winn, we take a holistic approach to all types of estate and end-of-life planning. Phone or email now to make an appointment to pursue your options. We are happy to help.

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