

Trustee and Power of Attorney School

The Zimmer Law Firm, LLC

Picking the Right Estate Plan Tool

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HOW TO FIND THE RIGHT TOOL



- ❖ An Estate Plan is like a toolbox. If you try to use the wrong tool, you will fail.
- ❖ This guide will help future fiduciaries select the right tool.
- ❖ The next slide lists the Fiduciaries under an estate plan



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“FUTURE FIDUCIARIES”

Fiduciary Name	Document that appoints the Fiduciary	Service During Maker's Lifetime?	Service After Maker's Death?
Trustee	Living Trust Agreement	Yes, if Trustor is incapacitated	Yes
Executor, aka Personal Representative, Administrator	Will (either Pour Over Will or Simple Will)	No	Yes. Court appointment
Agent or Attorney-in-Fact	Property Power of Attorney	Yes, if incapacitated	No
Health Care Agent	Health Care Power of Attorney	Yes	No
HIPAA Personal Representative	HIPAA Release	Yes	Maybe
Guardian	Appointed by a Probate Court order	Yes, for incapacitated adult or minor child	No

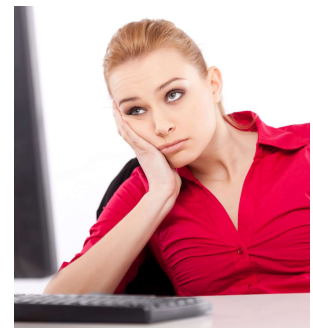


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HOW TO FIND THE RIGHT TOOL

- ❖ The following slides focus on what may be happening in an Elder's life
- ❖ They correlate those circumstances with the tools that will apply



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HOW TO FIND THE RIGHT TOOL

If Elder is...

- ❖ Unable to make medical decisions

Then use...

- ❖ HIPAA Release to obtain medical information
- ❖ Durable Health Care Power of Attorney to manage medical care
- ❖ Living Will to learn wishes about artificial life support
- ❖ Each document names Fiduciaries to exercise authority



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HOW TO FIND THE RIGHT TOOL

If Elder is ...

- ❖ Unable to make medical decisions -- but he doesn't have legal documents -- and needs medical treatment

Then your option is...

- ❖ Emergency guardianship proceeding
- ❖ In interim doctors can make decisions they think patient would want ("substitute judgment" rule)
- ❖ If patient's wishes can't be determined, then they can make decision in the patient's "best interests"
- ❖ Family consent may be possible depending on state law (Ohio = 12 months in a Permanently Unconscious State)



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HOW TO FIND THE RIGHT TOOL

If Elder is...

- ❖ Unable to manage his legal and financial affairs because of mental or physical impairment

Then use...

- ❖ Property Power of Attorney for legal and financial matters
- ❖ Names Agent(s) who can use the POA
- ❖ Must be activated according to procedure found in the document
- ❖ (Record the POA in county land records to sell or transfer real estate)



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HOW TO FIND THE RIGHT TOOL

If Elder is ...

- ❖ Unable to manage her legal and financial affairs because of mental or physical impairment ... and doesn't have a POA

Then your option is...

- ❖ Guardianship (Living Probate) in court



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HOW TO FIND THE RIGHT TOOL

If Elder is ...

- ❖ Deceased
- ❖ Owns real property with joint owners
- ❖ Elder has a will

Then do this...

- ❖ If co-ownership is **Tenancy in Common**, locate will, admit to probate, appoint Executor
- ❖ Executor passes title to heirs/beneficiaries under the will, or sells property and distributes cash



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HOW TO FIND THE RIGHT TOOL

If Elder is...

- ❖ Deceased
- ❖ Owns real property with joint owners as **tenants in common**
- ❖ **No will**

Then do this...

- ❖ Open a probate “intestate”
- ❖ Law creates the inheritance plan for the property
- ❖ Judge appoints Administrator who passes title to heirs under statutes of descent and distribution



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HOW TO FIND THE RIGHT TOOL

If Elder is...

- ❖ Deceased
- ❖ Owned real property with co-owners, titled with **rights of survivorship**

Then do this...

- ❖ Record Affidavit by surviving owner with death certificate
- ❖ Vests legal title in surviving owner(s)
- ❖ No probate – regardless if there is a will or not
- ❖ Then plan for how the property will pass at survivor’s death



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HOW TO FIND THE RIGHT TOOL

If Elder is...

- ❖ Deceased, and there are life insurance, annuities, IRA’s or retirement plans with beneficiary designations

Then do this...

- ❖ Find latest beneficiary designation of record. Request forms and procedures from company for the payout and process them.
- ❖ Investigate annuity settlement options.
- ❖ No probate...unless there is no named beneficiary living, or “estate” is the named beneficiary. If so, then do above but open probate case.
- ❖ Get professional advice, especially IRA and QP accounts, annuities.



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HOW TO FIND THE RIGHT TOOL

If Elder is ...

- ❖ Unable to manage her legal and financial affairs because of mental or physical impairment ... and accounts and real property are titled to Elder as Trustee under her Living Trust

Then do this ...

- ❖ Activate Trustee appointment. Get doctor reports, attach to affidavit of Successor Trustee re: parents' incapacity (as outlined in trust agreement)
- ❖ Present to financial institutions as needed or record in land records
- ❖ Probate not required



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HOW TO FIND THE RIGHT TOOL

If Elder is ...

- ❖ Deceased ... and accounts and real property are titled to him as Trustee under his Living Trust

Then do this ...

- ❖ Attach death certificate to affidavit of Successor Trustee proving the deaths (or as otherwise outlined in trust agreement)
- ❖ This activates Successor Trustee appointment
- ❖ Present to financial institutions as needed or record in land record
- ❖ Probate not required
- ❖ File Successor Trustee Affidavit in land records



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HOW TO FIND THE RIGHT TOOL

The following slides explain some common mistakes and what to avoid



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HOW TO FIND THE RIGHT TOOL

Do not use ...

- a. Health care power of attorney
- b. Property power of attorney
- c. Trustee status for accounts not titled to or payable to Trustee
- d. Trustee Affidavit

For this ...

- a. Financial assets or real estate
- b. For medical; trust-titled assets; or assets titled to Trustees
- c. E.g. IRAs, 401k's, annuities, life insurance. Use POA during owner's lifetime. After death, beneficiaries control.
- d. For medical decisions



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HOW TO FIND THE RIGHT TOOL

Do not try to use ...

Property Power of Attorney, Health Care Power of Attorney, or Living Will

A will

When this applies...

The maker of the documents is deceased

The maker of the will is still alive, or

The maker of the will is deceased, but the will is not yet admitted to probate



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