



Wise Fiduciary Decision-Making

Presented by

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**Senior Connections
Speakers Bureau**

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**Coventry
Vernon
Roberts** | Professional
Fiduciary
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Agenda

- Introductions
- Estate planning considerations
- Types of fiduciaries
- Fiduciary roles & responsibilities
- Guardianships / conservatorships
- Oversight and regulation
- Key considerations for choosing fiduciaries wisely

*Please note that
this presentation
is not intended to
provide legal
advice.*

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Introduction & Background

- Attorney licensed in Georgia & Arizona
- Consultant, employee benefits & executive compensation
- Master's level education – Gerontology
- Elder law / estate planning / probate
- Director of Estate Services: Coventry, Vernon, & Roberts, LLC in Prescott



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**Coventry
Vernon
Roberts**

Serving with Compassion & Integrity

Professional
Fiduciary
Associates



- Limited Liability Company; 3 members
- Glendale, Mesa & Prescott offices
- 20 associates with varied credentials and backgrounds, such as
 - Nursing
 - Law
 - Accounting
 - Real estate
 - Financial services
 - Customer service

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Fiduciary Definition

A **fiduciary** is someone who accepts the responsibility for taking care of the needs or property of another person ... for the benefit of that person....

..... Potentially, someone who is vulnerable or incapacitated and

..... For the benefit of that person, not the fiduciary's benefit

The fiduciary serves in a role of trust.

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Traditional Estate Planning

"I want to control my property while I am alive and well."

*"When I die, I want to **CONTROL**:*

***WHO** gets my stuff*

***WHEN** they get it*

***WHAT** they do with it"*

I want to provide for my loved ones and myself if I become disabled.

I don't want to be a burden to my family.

Question: Who do you trust to carry out these wishes?

Answer: The fiduciaries you choose

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Estate Planning

Important Legal Documents...

Nominate fiduciaries...

Health Care Power of Attorney	➡	Agent for health care decisions
Durable (Financial) POA	➡	Agent for managing finances
Last Will Testament	➡	Executor/Personal Representative
Trust (revocable living trust)	➡	Trustee, upon incapacity or death

Best Practice: Nominate a successor, and preferably two (2) successor fiduciaries, in case a fiduciary cannot serve for any reason.

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Types of Fiduciaries

- Individuals
 - ✓ Family members
 - ✓ Trusted friends
- Institutional
 - ✓ Banks
 - ✓ Trust companies
 - ✓ Minimum asset requirements
- Public fiduciary (by County)
- Private fiduciary companies**

**Oversight by AZ
Supreme Court and
Fiduciary Licensing Board

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Agent under Power of Attorney

General Durable POA*

Bill paying
Marshal assets
Investments
Accountings
Insurance
Legal actions
Pension & public benefits
Credit cards & debt
Establish trusts
Much more if POA includes

Health Care POA or "Advance Directives"

Consent to treatments
Correspondence with medical teams
Medication management
Public benefits
Pre-need arrangements
End-of-life wishes (living will)

* Authority under a financial POA ends at Principal's death.

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Trustee or Executor of Will

Trustee of Any Type of Trust

- Typically, trustee is the grantor until incapacity or death
- Follow the terms of *Trust*
- Preserve assets
- Review & choose investments
- Sell real property
- Accountings
- Distributions to beneficiaries
- Personal property disbursement
- Taxes

Executor is called "Personal Representative" in Arizona

- No authority until death
- Follow the terms of *Last Will & Testament*
- Many of the same duties as a trustee but through the Court system known as **Probate**

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Estate Disputes & Complexities

- 2nd marriages – stepchildren issues
- Family member influence or capacity issues
- Unintentional asset ownership problems
- Personal property disputes – guns, wedding rings, family photos, art collections, etc.
- Inconsistent amendments requiring interpretation
- Ineffective letters or post-nuptial agreements
- Complaints about administration

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No Estate Plan Is a Plan

Potential outcomes include:

- Guardianship
- Conservatorship
- Legal fees, court costs
- Public proceedings
- Court supervision and permissions
- State determination of intestate heirs

Confusion

Stress

Expense

Crisis

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Professional Fiduciaries - Code of Conduct

- Highest degree of trust, loyalty and fidelity
- Manage and protect personal and monetary interests
- Foster independence and self-reliance
- Avoid self-dealing
- Be independent of other service providers
- Vigorously protect against infringement of third-parties
- Extreme care and diligence
- Communicate information to the protected person
- Follow the preferences of the protected person if at all possible
 - Or best interests of the protected person
- Accurate record-keeping

AZ Code Judicial Administration 7-202(J)

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Fiduciary Decision-Making

1. Does fiduciary have the legal authority to make the decision?
2. What is the realistic timeline to make the decision?
3. Who are the stakeholders impacted? Are they incapacitated?
4. Does a cost/benefit analysis support the decision?
5. What are likely outcomes under various options?
6. Is this a legal issue? Should a court order be sought?
7. What other information is needed to make a better decision?

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Choose a Fiduciary Wisely*

- Timely decision-making
- Operates within authority and seeks guidance when needed
- Excellent communication
- Variety of services and capabilities
- Efficient and transparent fee structure
- Willingness to work with and cooperate with client's lawyers and investment advisors

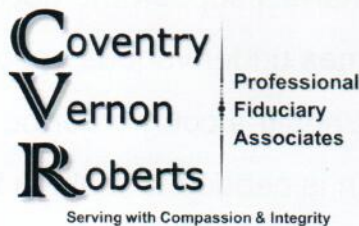
*Handout: "Questions You Should Pose
To a Potential Fiduciary"

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Thank you, Senior Connection

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Please note that this presentation is not intended to provide legal advice. Please consult your attorney.

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Questions You Should Pose to a Potential Fiduciary

A. Firms Ability to Handle Particular Case Types

- 1) What types of fiduciary services do you provide?
- 2) In what ways can your firm handle certain tasks more efficiently than a non-professional fiduciary?
- 3) What are the qualifications of your staff?
- 4) What is your caseload for each administrator; how do I know they will have the time to provide excellent service to the protected person/estate?
- 5) Who will actually provide fiduciary services to my spouse/parent/child/significant other?
- 6) Where is your office?
- 7) How do you handle the provision of services of persons placed significant distances away from your office?
- 8) Do you handle estates with assets outside of Maricopa County?
- 9) If you accept the appointment as Guardian & Conservator and the protected person depletes all of their assets, who will provide fiduciary services?
- 10) Do you accept appointments for veterans and/or their estates?
- 11) There may have been exploitation; can your firm conduct an investigation to determine if there is evidence of financial wrong-doing?
- 12) Do you provide consulting or other fiduciary-related services to non-professional fiduciaries?

B. Longevity / Succession Plan

- 1) How long have you been in business?
- 2) What is your succession plan?

C. Costs

- 1) Is there a fee for visiting your office to help decide on whether we want to engage your firm, or not?
- 2) How much will the services cost on an annualized basis?
- 3) In what ways can your firm handle certain tasks more efficiently than a non-professional fiduciary?
- 4) What are some of the variables that impact fees & costs associated with the administration of this type of case?
- 5) How do you bill – hourly/flat fee?
- 6) Do your fees vary depending on the knowledge, experience, and other factors required for the particular fiduciary services being provided?
- 7) When do I/my estate become responsible for the payment of fiduciary services?
- 8) Do you ever provide services for which you would not charge the estate/protected person?

D. Employment of Other Professionals

- 1) Do you (the fiduciary) use an attorney? If so, who pays?
- 2) Does your firm employ any professional providers; if so, who chooses them?
- 3) We prefer the brokerage services of XYZ Investment Company, would you be willing to continue to use their services?

E. Decision-making

- 1) How do you make decisions on behalf of an incapacitated adult?
- 2) Is there any recourse if the family does not agree with a decision the fiduciary has made?
- 3) Do you ever ask for input from other people, such as family or other professionals, when considering a difficult question?

*Roger T. Coventry is not licensed to practice law in Arizona

- 1) Will I have one point of contact, or will other staff be able to take my call?
- 2) Who will be the person(s) that I will be able to contact for updates/information?
- 3) Who is entitled to receive information about your services, the care plan, the annual guardian report and account?
- 4) What is your process for handling emergencies after normal business hours, weekends, and holidays?
- 5) How will you/your firm know when fiduciary services are required?
- 6) Will you review my estate plan prior to it being executed; if so, what are you looking for?
- 7) Do you require a copy of my estate plan to be placed on file?
- 8) Do you need contact information and other details for family, beneficiaries, or heirs?
- 9) Will I be able to participate in decision-making?
- 10) How will placement decisions be made?
- 11) Can we meet at a location, day, and/or time more convenient for me?

G. Oversight / Protection

- 1) Who is over-seeing the fiduciary?
- 2) Who is overall responsible for the fiduciary services?
- 3) How are the assets & income of the estate protected during your administration?
- 4) Who pays the bond premium?
- 5) What is the approximate bond premium?
- 6) Are there ways to reduce the bond amount?
- 7) What is our recourse if you fail to properly conduct your duties as a fiduciary?
- 8) Are you required to provide an accounting for your actions/handling of the assets & income?

H. Timeliness

- 1) What is the average time it takes to administer an estate?
- 2) How long does it take you/your firm to fully administer an estate?
- 3) I have a claim against the estate, how long will it take for you to process my claim?
- 4) I am a beneficiary of the estate; how long will it be before my share is distributed?

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