

## What Responsibilities Do I Have as an Executor?

### Estate Planning Strategies

Being named executor of someone's estate is a major responsibility. You are in charge of executing someone's last wishes by carrying out the provisions of their Last Will and Testament ("Will"). Equally as important, you arrange to pay creditors, open up financial accounts for the estate, notify and make distributions to beneficiaries and file tax returns. Being an executor often requires a considerable amount of time and organizational skills. This guide provides a general introduction to some of the key tasks. When you are acting as an executor for an estate, you will need to be in close communication with attorneys and other advisors who are involved in settling the estate.

#### **Q. I have just been asked to serve as an executor. What is the first thing I should do?**

Meet with the person (the testator) who asked you to be the executor (executrix, if a female). Some states now refer to an executor or executrix as the Personal Representative.

#### **Q. What happens when the testator dies? What do I need to do immediately?**

Ask the spouse (if living, the surviving spouse is usually named as the executor) and other family members if you can help with funeral arrangements.

If you are not able to access funds for funeral and burial expenses, you may have to ask family members to pay for these expenses.

Ask the funeral director for 10 to 15 original copies of the death certificate. You'll need these original death certificates (and / or certified copies of the death certificate) to retitle accounts and help the family collect life insurance, Social Security and other benefits for which they are eligible.

In addition, the surviving spouse or other family member should be asked to locate the original Will, which will generally contain contact information for the estate planning attorney who drafted the Will. In addition, the spouse or other family member or the estate planning attorney should create a list of all of the following:

- Assets and where they are located;
- Estate beneficiaries and alternate beneficiaries;
- Trusts, if applicable;
- Debts and creditors.

## Q. What is probate?

Probate is a legal process by which a court reviews the Will and determines if it is valid. Once the deceased's Will is validated and the court approves the appointment of the executor, the decision is binding. To begin the process of probating a Will, the named executor completes, with the assistance of an attorney, a probate petition that has to be filed with the probate court. Once the court approves the probate petition, Letters Testamentary will be issued, proving you have been named as the executor of the estate with the authority to act on behalf of the estate. You will need the Letters Testamentary to establish and close financial accounts, pay taxes and perform a variety of executor functions.

## Q. Am I responsible for the deceased's investments?

As the executor, you are responsible for protecting the deceased's property until it is transferred to the beneficiaries. That means you will need to be responsible and conservative in your investment decisions and avoid taking undue risks. A decline in portfolio value may not be your fault, but if that decline were due to an imprudent decision, you may be sued by any or all beneficiaries, unless the terms of the Will state otherwise. For accounts held solely by the deceased, notify the bank or brokerage firms where they are maintained and discuss your alternatives with the estate's financial advisor.

## Q. If the probate process is delayed, is it possible that heirs and creditors may have to wait to get their money?

- Possibly. To facilitate the process, you should perform the following functions: Notify all beneficiaries of their interest in the estate; a Will reading is only done if the executor and all beneficiaries live in close proximity to each other. Set expectations. Beneficiaries should understand that they will receive no inheritance, in the case where the Will is the controlling document, until the Letters Testamentary are issued naming an executor for the estate, the estate files a tax return and pays any taxes that are due, and all debts incurred by the deceased are paid.
- Notify all creditors about the death of the deceased and instruct them to file claims for payment within the period of time specified by law of the the state in which the estate is domiciled. You may want to consult with an estate planning attorney to review whether such creditor claims are valid. Obviously, some obligations cannot be deferred until the Will is probated. Mortgages and other loans held jointly by the deceased and his or her spouse now become the obligations of the spouse. Assets held jointly with right of survivorship by the spouse and the deceased may be retitled in the surviving spouse's name so that cash is readily available.
- In New York, and in some other jurisdictions as well, nominated executives have a duty to preserve as much of the estate assets as possible.

## Q. What do I do about nonfinancial assets?

It depends on the assets. Here is a brief list of common nonfinancial assets:

### Real estate:

Is property owned jointly with right of survivorship by the deceased and his or her spouse or other family member(s)? If so, and if there is a mortgage on the property, notify the entity holding the mortgage and register the mortgage and ownership of the real estate in the name of the surviving family member. You should also arrange for a name change on any home insurance policy.

### Automobiles:

- Contact the state motor vehicles agency to retitle the ownership of any automobile owned by the deceased.
- Change the name on any automobile insurance policies.

### Family business:

Look for a business insurance policy and / or stock certificates or certificates of ownership and then consult an estate planning attorney. Find out if there was a business succession plan in place and whether it included a buy-sell agreement or shareholders' agreement. If so, locate any life insurance contracts that may have been purchased to fund the agreement.

### Personal items:

Did the deceased leave a letter of instruction separate from the Will to dispose of personal property? If so, it will list which beneficiaries

should receive which personal assets of the deceased.

## Q. Are there any other matters that an executor needs to be aware of?

Cancel health insurance. Close credit card accounts. Contact the Social Security Administration and Veterans Administration, if applicable, to stop payments or determine whether the deceased's family members qualify for benefits. You should also contact the deceased's employer to learn about possible pension and group life insurance benefits for which family members might be eligible.

## Q. What about taxes?

### Who files the estate tax return?

Estate taxes must be paid before distributions may be made from the estate. Generally, state and federal estate tax returns must be completed within nine months of the deceased's passing, and any taxes must be paid in cash. If the federal estate tax has been paid in full and there are no errors on the federal estate tax return, the IRS can issue a Closing Letter affirming that all estate taxes have been paid. At this time, you may distribute estate assets to beneficiaries.

**One more note:** The final federal estate income tax return and the state income tax return are due on April 15 in the year after the year of death. For example, if the deceased dies on January 1, 2022, the final estate income tax return will be due on April 15, 2023; if the deceased dies on December 1, 2022, the final estate income tax return also will be due on April 15, 2023. In both examples, the year of

death was 2022; the month of death is not important.

## **Q. As an executor, am I entitled to compensation for my services?**

Under state law, an executor is entitled to be paid a fee for services rendered, based on the value of the estate assets subject to probate. Many states allow executors to charge a percentage fee on assets that go through probate. The executor may elect to waive any

and all executor fees; if he or she does so, there will be no compensation paid.

## **Q. What should I do before I agree to accept the responsibility of being an executor?**

Talk to an experienced estate planning attorney, preferably the attorney who drafted the Will and understands the testator's wishes and family dynamics

## **Q. How long does the probate process take?**

Depending on the size of the estate, the complexity of its assets, and whether there are any family members who feel compelled to contest the terms of the Will, the process can take anywhere from a few months to a few years. Until the Will is validated and Letters Testamentary are issued to the executor authorizing the executor to act, financial institutions will not release any of the deceased's assets.

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