

## What Responsibilities Do I Have as an Executor? Estate Planning Strategies

Wealth and Estate Planning Strategists  
Family Office Resources

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 (sometimes referred to as an 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 members 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, other family members, 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, and their contact information;
- Trusts, if applicable; and
- Debts and creditors.

## **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. Until the Will is validated and Letters Testamentary are issued authorizing the executor to act, financial institutions will not release any of the deceased's assets.

## **Q. What is probate?**

Probate is a legal process by which a court reviews the Will and determines if it is validly executed. To begin the process of probating a Will, the named executor completes, usually 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. 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 and provide a copy of the Will. 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 an income tax return and estate tax return, if applicable, 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 the law of 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.

## 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?

Federal and state estate taxes, if applicable, 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 executor may distribute estate assets to beneficiaries.

**One more note:** The decedent's final federal and state income tax returns are due on April 15 in the year after the year of death. For example, if the deceased dies on January 1, 2023, the decedent's final income tax returns will be due on April 15, 2024; if the deceased dies on December 1, 2023, the final income tax returns also will be due on April 15, 2024. In both examples, the year of death was 2023; 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, whether an estate tax return is due or being filed, 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.

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