

WHO SHOULD BE EXECUTOR?

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Often when parents or friends are doing estate planning they name family members or others they trust to serve as executor of their estates. Hopefully, they ask you first. Many people do not. While many view it as an honor to be selected to settle someone's financial and business affairs, it often turns out to be far more work and effort than they or the testator ever planned.

What does an executor do?

First, since he or she is appointed by the Will, the Will must be admitted to probate in the county where the decedent died or had been residing to give the executor legal authority to take charge. A lawyer must be hired, and, unless the Will waives the requirement of a bond, the executor must post a bond with the court equal to the value of the assets (less real estate) plus ten percent (10%). The executor may be reimbursed at the closing of the estate. Notice must be given to those family members who would receive the estate under the intestate laws. The family members may sign waivers to facilitate the process and avoid being served by the local sheriff.

When the Will is admitted to probate, the court issues Letters Testamentary which are certificates evidencing the authority given to you by the court. These Letters are presented to the various institutions in order to have them release the assets for distribution.

The executor marshals – or gathers – the assets in the estate, including personal property, and pays all of the just debts of the estate. An estate is required to remain open for at least six months so that creditors may come forward and file a Proof of Claim with the Court. If the Claim is not filed within that period of time, it is barred. At the end of six months, assuming no estate tax return has to be filed and other matters have been resolved, the executor can file with the court to have the estate closed, and distribute the assets according to the terms of the Will. The executor will also pay any administration expenses and the court will award him or her commissions based upon the value of the estate and its complexity.

At the closing, the beneficiaries of the estate can consent to a settlement or object. If they object, a hearing will be held to determine the validity of the objections, and the court will rule. If they consent, the court will close the estate and the executor will be released from any liability for handling the estate.

The foregoing assumes everything goes smoothly and there is no Will contest, federal estate tax return to be filed or other lengthy issues to be resolved.

So, do you really want to serve? In families with issues, the best bet may be to select a trust company or bank to handle the estate. This minimizes the family interaction

and focus of anger on the executor family member. Alternatively, the court is overseeing the progress of the estate and will direct the executor to do what the Will requires.

For the testator, you need to consider if this is a responsibility you want to place on someone you love. For the executor you need to consider if this is a responsibility you want to undertake. The lawyer you select can make this process easier and take some of the responsibility off your shoulders for some ministerial actions, but the ultimate responsibility is yours. Think carefully.