

## Executor Duties Overview

The purpose of this document is to provide an outline of the roles and responsibilities of an executor.

If you plan to name a family member(s) as your executor, know that they are doing you a huge favor and that settling an estate often amounts to a full-time job.

The biggest favor that you can do for them is to get your affairs organized before tragedy strikes, and stay organized.

## Care of Survivors

The first obligation of an executor in the event of a sudden death is the immediate care of a surviving spouse or children who were dependent on the deceased for financial or other forms of support.

Family members normally take on the responsibility of personal care of the survivors, but in the rare event that no immediate family members are available, the responsibility falls on the executor. The executor must make sure the deceased's dependents are safe, secure, and properly cared for until more permanent arrangements can be made. In the circumstance of a disabled surviving spouse or orphaned children, and in the absence of family support, the executor must seek legal advice.

## Executor Duties

General executor duties are outlined below. There are many layers below the surface, each one, involving a significant amount of work. There are over 500 possible tasks in QuickEstate's Estate Executor toolkit.

A very simple estate usually takes at least 18 months to settle.

- Deal with the remains of the deceased and arrange a funeral
- Locate the Will and other estate documents.
- Identify and locate the beneficiaries
- Manage the money:
- Determine the estate assets: gather, safeguard, value them, and, eventually,

liquidate them.

- Determine the estate debts: validate, prioritize and, eventually, pay them.
- Apply to the Court for Letters of Probate or, where there is no valid Will, for Letters of Administration.
- Deal with the deceased's residence(s) and personal effects.
- Arrange for income tax to be paid, final tax returns prepared, and to obtain clearance from the federal tax authority.
- Provide ongoing accounting to beneficiaries and, if necessary to the Court.
- Make interim and final distributions to the beneficiaries.
- Administer ongoing trusts, if applicable.

The executor must conduct themselves in a fiduciary manner throughout the estate settlement process. This concept will be explored in the next section.

## Fiduciary Responsibilities & Personal Liability

An executor has been appointed to the highest position of trust and, in settling an estate, they must act in a "fiduciary capacity". What does this mean?

A fiduciary is someone who has been given control over the property of another person and is responsible for acting solely in the interests of that person or their heirs. An executor named in a Will has fiduciary responsibility as soon as the deceased passes away and the Will takes effect.

## Fiduciary Responsibilities

As a fiduciary, the executor must behave in the following manner:

- Follow directions in the Will and/or apply to the Court for direction when necessary.
- Put the interests of the beneficiaries ahead of all other interests.
- Act prudently at all times when dealing with all aspects of the estate.
- Keep the affairs of the estate strictly confidential.
- Avoid breaching the trust of the deceased and the beneficiaries.
- Treat the beneficiaries with an even hand, remaining impartial at all times, not



favoring one beneficiary or a class of beneficiaries over another.

- Ensure there is no conflict of interest between the executor's own affairs and the affairs of the estate.
- Receive fair and reasonable compensation for the work, but do not unduly profit from the estate.
- Be prepared to provide a formal accounting of the estate to beneficiaries and, as necessary, to the Court.

## Personal Liability

If an executor does not behave in a prudent, fiduciary manner, they can be held responsible (i.e. subject to personal liability) by the beneficiaries. It is important to note that, even if the executor makes an error out of ignorance that costs the estate money, the executor can be held personally responsible for the loss.

If a person is named as an executor but knows they cannot accept the role and the responsibility it carries, they must avoid any involvement with the estate and immediately contact a lawyer to formally resign or "renounce" by way of a court application.

## Choosing an Executor Wisely

Choosing an executor is one of the most critical decisions to make in Will and estate planning. Select an executor(s) who is:

- A legal adult. Minors cannot be executors.
- A citizen of your country with no criminal record.
- Confidential, stable and trustworthy.
- Always able to put your wishes and the needs of the beneficiaries first, with no conflicts of interest.
- Financially responsible, capable of managing your assets conservatively and prudently.
- Able to persevere through a long list of administrative tasks involving paperwork, dealing with government agencies and financial institutions.
- Organized and methodical, with basic computer skills, who will keep good



records.

- Evenhanded and diplomatic, capable of managing beneficiaries and other family members.
- Willing and able to assume the role in terms of the responsibility and time involved.

## Common Errors in Choosing an Executor

- Appointing someone who lacks administrative skills and basic financial knowledge.
- Not wanting to leave anyone out and appointing all your children, regardless if they are qualified or capable of working together.
- Appointing someone in another jurisdiction who would have difficulty doing the job from afar and may have to post a foreign executor bond.
- Appointing a very busy person who would have difficulty settling the estate in a timely manner.
- Appointing someone older, who could be too elderly, infirm or deceased when the time comes.
- Not reviewing your Will with your executor every few years to ensure they are still willing and able to act.
- Not appointing a contingent executor in your Will should the named executor be unable to act.

## Appointing a Professional Executor

If there is no one with the qualifications above or if your estate is complex or contentious, you may wish to appoint a professional executor/trustee such as a lawyer, bank or trust company.

When choosing a professional executor, shop around for experience, continuity and reasonable fees.

While the fees charged by professional executors vary widely, most charge approximately 5% of the net value of the estate assets. There will be additional charges for professional services, such as legal, accounting, appraisals, out of pocket



expenses, and any additional charges not directly related to their work.

## Lawyers

Very few lawyers practice regularly in the estate and trusts area. Should you decide to appoint a lawyer as sole or co-executor, confirm their years of experience in this area and how many estates they handle each year. Also establish the depth of their estates group so if your lawyer leaves the firm or is unable to act, a colleague can take their place.

Ask about their support staff and staff turnover. A lawyer doing estate work regularly should have an experienced estate paralegal who can efficiently process the paperwork.

Confirm how they will charge their fees based on the nature of your estate: by the hour or as a percentage of the estate value? Agree on their fee schedule in advance and, if possible, get it in writing.

## Banks and Trust Companies

Should you wish to appoint a bank or trust company, establish the size of their local trust department in terms of the number of trust officers and trust administrators and their years of experience.

Most large banks have trust departments but they vary widely in terms of the number of staff and their level of experience in different locations. Because estate and trust work can be a less profitable, “loss leader” for banks, their trust department may be thinly staffed and staff turnover can be high.

Some banks and trust companies centralize estate administration work in a single location to establish better continuity and economies of scale. Whether the work is done locally or elsewhere may impact how effectively and efficiently your estate will be administered.

Estate lawyers have regular dealings with trust companies. The estate lawyer drafting your Will should be able to tell you which local banks or trust companies have the most experienced trust departments with the best service.



The bank or trust company will provide a fee schedule based on the nature of your estate. Should you choose to name them as sole or co-executor, they usually require that the agreed upon fee is stated in your Will.

### **Co-Executors and Contingent Executors**

If you wish to appoint more than one person as executor or as a contingent executor(s), be sure that they are all qualified and capable or working well together. A common error in creating a Will is to name all of your children as co-executors, to avoid leaving some children out, ignoring the fact that they are not all qualified to do the work or capable of working together.

### **Ask Permission First**

Once you've decided on the best person(s), ask their permission before naming them as executor.

Don't assume your loved ones or friends will consider that being your executor is a privilege, because it's not. The role carries legal responsibility and entails a lot of work. If, when the time comes, your named executor is unwilling or unable to act and there is no contingent executor named in the Will, they will have to formally renounce through a court application. This costs money and delays the entire settlement process.

### **Executor Compensation**

Given the seriousness of the responsibility and the time involved, no one, including family members, can be expected to administer your estate for free.

Have an up-front discussion about compensation with your executor. Government guidelines for executor and trustee compensation are a good starting point.

Have the agreed upon compensation terms formalized in your Will or in an ancillary document to prevent friction with beneficiaries or other family members when the time comes.

### **Guardians for Minor Children or Disabled Dependents**

Choosing guardians for your minor children or disabled dependents is one of the most important decisions you will make when organizing your estate.

The guardians you choose must be willing and able to take on a role that may last many years. They must share your values and you must be confident that they will always act in the best interests of your dependents.

Obtain their permission before appointing them in your Will. No one wants this kind of surprise.

Have a detailed financial discussion to give them the confidence that, in the event of your untimely death, there will be adequate resources to properly look after your dependents and that it won't create a financial burden for them.

### **Keep your Executor(s) Informed**

At death, the three big questions facing executors are:

- Where are the legal documents? e.g. the Will, life insurance policies, title to the house, etc.
- Who needs to be contacted and how? e.g. executors, beneficiaries, other family members, professional advisors, regular service providers)
- What is involved, in terms of assets and liabilities, and where is everything?

Having these questions answered in advance is the most priceless gift you give your executor, who, by the way, is doing you a huge favor.

Use **QuickEstate's** Contacts, Document Locator and Estate Inventory system to gather, regularly update this important information and share it with your executor. It's a total game changer in terms of time savings for them and money savings for the beneficiaries.