

Executors and Their Duties

There will be a time when you will need to decide who you should appoint as executor of your Will. As well, there may be a time when you will be asked by someone to act as the executor of his or her Will. In either situation, it is important to be clear on the duties of an executor before making your decision. This article will briefly outline the basic premise behind having a Will, and will then explain in more detail what an executor is, the duties of an executor, and what factors need to be considered when choosing an executor.

The Importance of Having a Will

A Will is probably the most basic of estate planning tools. A Will allows you to demonstrate how you wish your estate to be distributed upon your death. It also allows you to choose who will administer the assets that form your estate, and to specify how much authority will be granted to this individual (the executor). This individual may have to deal with a variety of issues such as family problems, unique assets, and determining who will look after minor children. If you do not have a Will then you will die "intestate." In this event, the "rules of intestacy" in any given jurisdiction will determine how your estate will be distributed. These decisions may be totally contrary to your wishes and this process will also undoubtedly significantly delay the settling of your estate.

What is an Executor?

An executor is someone appointed in a Will that is responsible for settling an individual's estate after his or her death. An executor can be a person, one or more persons, or a trust company. An executor may also appoint a trust company to do the administrative work of an estate on his or her behalf. It would not be unusual to appoint your spouse as executor, however, it would be prudent to appoint an alternate executor in the event that your spouse is unable or unwilling to act. The duties of an executor can be demanding and time consuming. In addition to dealing with considerable paperwork, it may also mean having to cope with tax laws, inheritance laws, family property laws and court procedures. At the same time, the demands of beneficiaries may have to be addressed as well.

Duties of an Executor

The duties of an executor, if listed item by item, could take four or five type written pages to outline. For the purposes of what may be helpful for you to know in order to make an informed decision, the common duties are as follows:

- Locate the Will and contact all the beneficiaries
- Prepare an inventory of assets and liabilities forming the estate (assets must be listed by class with their value and full particulars noted which may involve arranging for appraisals of real estate or other personal property)
- Obtain last 6 years tax returns and prepare and file any T1 returns that were not previously filed within 6 months after the date of death
- Notify all relevant insurance, health and pension benefit providers and file related claims
- Complete application for probate and make provision for any fees that may be applicable (note: If the deceased owned property outside of Canada, the executor must also determine if there is a



valid Will for the jurisdiction the property is in. If there is no such Will, the applicable legislation must be determined. Any foreign tax liability, irrespective of whether there is a Will in place or not, must be identified as well.

- Review the Will and determine an appropriate plan for the distribution of assets to beneficiaries
- File a Terminal T1 tax return and any other returns with Canada Customs and Revenue Agency and request a Clearance Certificate (note: Terminal period returns must be filed by April 30th of the year following the date of death, or by 6 months from the date of death, whichever is later.)
- Review post-mortem tax planning opportunities, i.e. spousal trusts, income splitting opportunities, unused expenses etc.
- Advertise for creditors and settle all claims and debts
- Prepare accounts for passing of assets and write to beneficiaries for approval
- Distribute assets to beneficiaries with a final report on all aspects of administration

One more thing to consider in this decision is the fact that an executor is dealing with the principles of common law and, in so far as he or she is in breach of trust, is liable for any mistakes or errors that may occur.

Selecting an Executor

If you appoint an individual as your executor you need to consider someone who has the ability to successfully complete all the related duties. You may also want to consider an individual who will be sensitive to the needs of your family. It is also wise to consider that when appointing an individual, he or she could predecease you. Unless you remember to update your Will, there would not be a valid executor at your death in this situation.

For these reasons you may want to consider appointing a trust company to act as your executor. These companies have the expertise to handle the duties and are "perpetual" so you need not worry if they will be there at your death.

Any executor may charge up to 5% in fees. This fee can be charged against the gross value of the assets that comprise your estate. This is the maximum amount as set out in the Trustees Act. However, most trust companies will negotiate the actual amount charged, and it will likely be determined by the size of the estate, its complexity and the success the executor has in settling it.

Making an Informed Decision

As you can see, there are many factors to consider when determining whether to appoint an individual or a trust company as your executor (and when determining whether or not to accept to act as an executor yourself). As long as you are aware of the complexities and duties that can be involved, your final decision will at least be an informed one.

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