

THE ROLE OF AN EXECUTOR OR ADMINISTRATOR

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Estate planning begins with wise analysis and inventory of one's property and assets. In planning, one exercises the privilege of conserving the estate as well as minimizing costs. Wise planning includes definite plans for the present and future. Wills, trusts, insurance and savings plans, money plans, plans for operating the business, fair market values, property consideration, beneficiaries, minimizing taxes and administration of an estate are some of the factors to consider. Naming an executor (or executors) and understanding his duties are important in estate planning.

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One of the great privileges we enjoy in making a will is the opportunity to name our personal representative to carry out the terms and provisions of the will. This person is called either an executor or an executrix. The term executrix refers to female persons serving in such a capacity.

Once the will designating the particular executor has been established in probate, his authority to act in handling the affairs of the estate depends upon the laws of the state where the estate is in process, and upon the provisions of the will.

In Texas, for example, a person preparing a will may eliminate the requirement that the executor post bond. A bond is required unless a provision to the contrary is contained in the will. Many Texas wills also contain language restricting the amount of court supervision which may be exercised in a particular estate. Such provisions give an executor a measure of independence, so that he acts with regard to the property and estate as might the decedent if he were alive. Executors who enjoy these special prerogatives are customarily called Independent Executors, and their work is to carry out an "independent" administration of the estate.

In wills which do not contain this particular language, the designated personal representative han-

dles the estate affairs only with court supervision and with the expense of a bond. This is called a "dependent" administration.

Wills that fail to appoint executors can still be probated, but the estate is called an "administration with will annexed." The property will be divided according to the terms of the will, but only with extensive court supervision. The administrator is a person appointed by the court, as in all cases where the decedent leaves no will.

Administrators carry out each of their respective duties, but only under the strictest court supervision. While an administrator has many of the same functions as an executor, he lacks the flexibility that can serve to lessen the expenses connected with dying.

An executor is a take-charge person. He needs the experience to know what to do and how to do it. He needs to have time to devote to this particular project. He needs specialized knowledge in running the farm or ranch business and in making sound business judgments.

Obviously a sense of fairness must characterize all his actions. He must be accurate and straightforward in his accounting in order to assure maximum benefit to those named in the will.

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When one chooses an executor, it is wise to consider the following examples of what might be involved in handling an estate.

An Executor's Duties

- If specified in the will, the executor may be called upon immediately to provide details for the funeral service or to carry out existing instructions.

- He should see that the original signed will is located and delivered to his attorney for filing for probate.

- He must appear in court with counsel and there obtain Letters Testamentary, which constitute his formal authorization to act as executor. Special circumstances may require special temporary orders of the court in order to protect estate assets.

- He must protect the property. He must determine if any assets are perishable, and if so must see that they are properly cared for.

- He must see that the contents of all safe deposit boxes are inventoried and released. (A special order to enter a safe deposit box to obtain a will is easily obtained in Texas.)

- He must see that items of personal worth such as jewelry, securities and other personal effects are placed in a safe place or in a properly designated depository.

- He must transfer all checking accounts to an estate account.

- He must list his name on each savings account as the authorized depositor.

- He must obtain the release of any liens against the estate.

- He must obtain release of any assets held as collateral for any purpose, if possible.

- He must take possession and control of any business or other assets owned by the estate.

- He must institute collection of all amounts due the estate, such as notes and accounts receivable and insurance proceeds.

- He must take inventory of all estate assets.

- He must arrange for an appraisal of the estate for Inheritance and Federal Estate Tax purposes.

- He must make a projection of estate liability for tax assessments, and arrange for liquidity in the estate to cover this amount when due.

- He must open up a set of books for the estate as the required accounting record of all estate transactions.

- He must pay all funeral, medical and other necessary bills of the testator's last illness and debts of the estate.

- He must pay all administration expenses, and make a proper defense against all improper claims asserted against the estate.

- He must post "Notices to Creditors" as may be required by law.

- If the real estate is to be liquidated, the executor must handle all of the transactions connected with closing.

- He must file legally required Federal Income Tax returns, and if income is accrued from other states, any applicable state tax returns for the period in the year of death up to the date of death.

- He must file the required Federal Estate Tax returns and any Gift Tax returns that might be due.

- In so doing, he must determine the value of estate assets, the property valuation date and the manner of payment.

- He must institute any trust arrangements called for in the will and make transfers to the designated trustees.

- He must distribute cash legacies and specific bequests and complete distribution of the remaining assets of the estate after completing accounting requirements.

A substantial expense item in an estate is the fee for an executor or administrator. This fee is set out in the law and in no event shall it exceed 5 percent of the estate's gross value. The fee is determined by allowing the executor or administrator a commission of 5 percent on all amounts actually received by them in cash (not counting cash which the deceased had in a bank at death) and a commission of 5 percent on all amounts actually paid out in cash during the administration (not counting distributions to heirs or named beneficiaries). In actual practice, the executor's or administrator's fee might not reach the maximum percentage limit. One provision says that if an executor or administrator manages the estate's farm, ranch, factory or other business and the percentage allowed by law appears unreasonably low, the court may permit additional compensation for such services.

In those instances where the estate's primary beneficiary is also the executor or administrator, there is no reason for such a fee. It is not reasonable, however, to expect one who gets no bequest or inheritance in an estate to serve without compensation.

It is possible to limit by will the fee an executor will be allowed. If the executor agrees to serve at a reduced rate, he cannot receive additional pay.

Obviously, great expense is saved by naming an executor in a will rather than having the court intervene at every step. This advantage allowed individuals by law is too great to be ill considered or ignored.

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