



How to Choose an Executor for your Will and The Responsibilities of an Executor

Choosing an executor for your will is an important decision. It is also a big decision for the person agreeing to be executor. From the perspective of the person making the will, it is often a difficult decision in selecting an executor among various family members. From the perspective of the person named as executor, many people often agree to be executor without finding out what the responsibilities are in advance, and when the time comes to deal with the estate, they find it overwhelming. The following overview first discusses some considerations for choosing an executor, and secondly the main roles and responsibilities of an executor.

How to Choose the Executor for your Will

The most important job for the executor is to ensure that after your death, your wishes are carried out in the manner stated under your will. When selecting an executor, many people immediately think of a spouse or one of their adult children. The responsibilities of an executor can be demanding and time-consuming. While choosing a spouse may be a fine decision initially, it may be a good idea in your senior years to update your will. If you are in old age when you eventually pass away, and your spouse is a similar age, your spouse may find him or herself overwhelmed with, or incapable of, meeting the responsibilities. Prior to your senior years, many people would find it logical to have a spouse be an executor, as that is the person likely to be most familiar with the assets and liabilities of the estate.

When evaluating one of multiple family members to select as an executor, keep the following considerations in mind. From the perspective of someone being asked to be an executor, these are questions you can ask yourself as well.

1. The executor should ideally be someone who lives in the same city. From a practical perspective, many of the matters which have to be dealt with involve meeting or communicating with third parties associated with the deceased, who also likely live in the same city. An executor who lives far away may find the logistics of communication challenging.

2. What is the proposed executor's time constraints? The tasks involved in being an executor are time-consuming. Does this person have a full time job? Does this person have young children at home or a full family life?
3. Family dynamics – what is the nature of the relationships between the various family members? Do they generally get along well together or will the executor end up finding themselves in the middle of constant disagreements which he or she will have to mediate?
4. Does the proposed executor have any background or experience that will help them understand the terminology and tasks involved, such as a legal or financial background?
5. The job of an executor is multi-faceted and requires attention to detail. Is the proposed executor good at multi-tasking and is he or she detail-oriented?
6. It goes without saying that the executor should also be highly dependable, trustworthy and follows things through to completion. Ultimately the executor is accountable to the beneficiaries for proper handling of the estate.

What should the Testator and Executor discuss in advance?

Once the will has been drawn up and an executor named, there are a few things that can be coordinated in advance which will make the executor's job much easier when the time comes.

1. Talk about the testator's wishes for his or her funeral service, cremation or burial
2. The executor should know where the official original of the will is located
3. The testator and executor should discuss the testator's financial assets, and where account information is stored. If possible, the testator should also discuss his or her financial liabilities and debts with the executor.
4. The testator and executor may want to discuss the testator's assets that are intended to flow through outside of the will, such as trusts, life insurance policies or anything with a named beneficiary, assets owned in joint tenancy, etc.
5. If there is anything potentially contentious in the will (such as uneven distribution of assets to the children), it may be a good idea for the testator to document the reasons for such decisions (ideally with the help of a lawyer) and include this memo with the will.

Responsibilities of an Executor

From the perspective of the named executor, the following is a general non-exhaustive overview of your main responsibilities.

Funeral Arrangements

Arranging for the funeral will typically be the executor's responsibility, although you'll obviously want to take into account the deceased's and the family's wishes.

Confirmation of the Last Will and Applying for Probate

You'll be responsible for identifying the last will made by the testator. This usually can be done by contacting the lawyer or notary who prepared the will, or conducting a search through the local vital statistics department if the will was registered. An application needs to be made to court for probate, which is validation of the will.

Some executors may also have peace of mind in hiring a lawyer to guide them through their legal responsibilities as executor.

Protecting the Estate

You'll need to identify the assets and protect the estate until the distribution is ready to be made to the beneficiaries. This may include taking care of any vacant property and safeguarding valuables. You'll also need to identify anything that involves charges and fees and arrange for cancellation of things such as credit cards, club memberships, and subscriptions.

Taxes

You'll need to file tax returns for any years for which the deceased did not file a return. Tax returns will have to be filed then for the estate for each year after death until the estate is wound up. All taxes owed must be paid before the remainder of the estate can be distributed to the beneficiaries. It is recommended to obtain a tax clearance certificate from Canada Revenue Agency.

Payment of Debts

Creditors will have to be identified and debts paid out. You'll need to compile a list of all liabilities related to the estate.

Inventory and Valuation of Assets

You will want to compile an inventory of the main assets of the estate and obtain proper valuations of the items of significant value. Other than items that are specifically identified in the will as going to a beneficiary, normally most of the household contents will be sold and the proceeds will form part of the estate.

Contacting Beneficiaries and Distribution of Assets

All beneficiaries under the will should be contacted and an accounting of all distributions needs to be made. An executor may claim a fee for acting as an executor which can be up to 5% of the value of the estate. In such case, these fees should be included in the accounting report.

An executor also should be aware of the Wills Variation Act, which enables a child or spouse of the deceased to apply to the court to vary or change the terms of the will. The executor should wait until the application time under the Act has passed before distributing any assets under the will. The executor takes on personal liability for ensuring the assets are distributed to the correct individuals.

For more detailed information or to receive a complimentary consultation to enquire how we can help executors fulfill their duties, please contact us anytime.

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