

Duties of the Executor

An Executor is a person (or institution) named in the decedent's last will and testament to handle their affairs after death. The executor specifically manages the probate estate. Being the executor means someone has entrusted you to manage with honor and dignity the settling of their affairs. The executor is considered to be a fiduciary under law which means he or she must always act for the exclusive benefit of the heirs of the estate.

The Executor must be free of any conflicts of interest that may impair their ability to act as a fiduciary. Lawsuits surrounding estate inheritance are not uncommon especially when large sums of money and multiple heirs are involved. And in any lawsuit, the actions of the executor will likely come under review. If you think you may have a possible conflict of interest or have any questions about the responsibilities of an executor consult a qualified estate attorney before you accept the role.

The fiduciary responsibility implies a high degree of good faith. If the Executor violates the trust of others leading to a lawsuit, he or she could be held personally liable by the court.

The fulfillment of the executor's responsibilities typically runs from death to after filing the decedent's estate tax return (nine months). If litigation is involved in settling the estate then the responsibility could extend for years.

Often times the role of executor falls on the surviving spouse, eligible children or other family members. The position of executor can be very stressful following the death of a loved one. If you know you are nominated as the executor in the Will, it is to your benefit to begin planning early on how you will handle the duties of settling the estate. The following checklist may be of help as you prepare to assume the role of executor.

Before Death

- If the estate owner is terminable, consider consulting with an estate attorney, preferable before the death occurs.
- Have the estate owner record all the investment accounts by investment firm, account number, beneficiaries and approximate balance for every

Attorney fees may be negotiable.

investment account, insurance and annuity policies, bank accounts and safe deposit boxes.

- Have the estate owner record all personal email address along with username and password. While not totally necessary, it will make it easier to locate friends and relatives who may wish to know about the death. Same with places of work, union and professional organizations. It's a good idea to do this for your accounts too.
- If the estate owner is terminal, consider arranging for the funeral, burial or cremation and memorial service before death.
- If the patient is terminal and at home
 - Hospice Care can be a wonderful source for caregiver support, nursing advice, homecare equipment and grief consulting.
 - Coordinate with the funeral home for body pick-up after death. Have the funeral home point of contact and telephone number close at hand.
- If possible make yourself knowledgeable about the location and contents of the:
 - Last Will and Testament (to confirm your nomination)
 - Living Wills and Medical Directives
 - The Durable Power of Attorney for Health Care
 - Durable Power of Attorney for Property
 - Revocable Trust document (if applicable)
 - Personal Instruction Letter
- Other important documents you should be knowledgeable of
 - Property deeds and titles
 - Marriage Certificate(s)
 - Birth or adoption certificates of children
 - Military discharge papers
- Check state laws as to whether or not you are required to use a probate attorney.
- You will need money in order to settle the estate. Attorneys, CPAs and other professional may require a retainer or estimated total in advance. If possible, create an estate checking account which can be used to pay these expenses.

Important Disclosure Information

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After Death

- Contact the estate attorney as soon as possible to start the post death activities.
- Specific duties of the Executor will vary by state and some states may have specific requirements that must be accomplished. In most cases the Executor may have to:
 - Identify, gather, value and safeguard probate assets
 - Publish a “Notice to Creditors” in local newspapers
 - Search for known or reasonably ascertainable creditors and notify them of the time when their claim must be filed.
 - Object to improper claims and defend suits brought on such claims
 - Pay valid claims
 - File tax returns
 - Pay taxes
 - Employ necessary professional to assist.
 - Pay administrative expenses
 - Distribute assets to spouse or family
 - Distribute assets to beneficiaries
 - Close probate administration
- Confirm with the funeral home who is responsible for notifying the Social Security Administration about the death.
- Coordinate with the funeral home for the Certified Death Certificate (CDC). The funeral home should complete the required forms and file them with the state. Obtain at least 10 certified copies. Every insurance company, investment company, bank and anyone else who is holding money for the decedent will want a CDC. Photocopies may not be acceptable.
- Probate is usually a required process and means that the will is given legal effect by the court. This means the will is valid and gives the executor the authority to carry out their duties in accordance with the will. The probate process varies by state and using an estate attorney will ensure you get it right.
- Make an inventory of the decedent’s assets and put safeguards in place to protect the assets.
- Ensure insurance, mortgage and other reoccurring payments continue to be made while the estate is being settled. Consider cancelling unused services like cable TV, Internet access and other weekly or monthly expenses if they are no longer needed. Cancel all credit cards and medicine prescriptions.
- Inventory and discard remaining medicines.
- The executor may have to liquidate assets, run a business or perform other activities that are outside the skills of the executor. If so, you will have to hire the skill sets to ensure these activities are handled properly.
- You may have to sell investments or real estate. If so, you may need to obtain certified court documents appointing you as the executor. You may need to hire an appraiser to qualify a “fair market value” on certain assets.
- The executor is responsible for filing necessary income and estate tax returns and for all death taxes. Be aware that the executor may have personal liability for unpaid taxes. Check with the attorney and CPA to determine which tax returns must be filed and when.
- The executor may also need to file a written notice with the IRS that you are serving as the fiduciary of the estate. This gives you the authority to deal with the IRS on behalf of the estate. The attorney may also advise you to obtain an employer identification number (EIN). The EIN would be used on all returns and other tax documents dealing with the estate.
- The executor is responsible for paying the debts of the estate. Be sure to qualify each of the claims. Claimants may submit a fraudulent claim hoping to be paid in the confusion. Don’t forget the CPA, attorney and other professionals you hired to help with the estate. Ensure you have enough money to pay the taxes before paying the debts.
- The executor is responsible for distributing the estate assets according to the will. This will require meticulous bookkeeping. You may need to have the beneficiaries sign for the asset. You may also do a partial distribution so the beneficiaries can receive some of their inheritance without having to wait until the estate closes. Check with the estate attorney for guidance.
- After the taxes are paid, all the debts paid, all the assets have been distributed and the beneficiaries satisfied, you can have the court formally close the probate process. This varies by state and may require a formal filing with the court. This then terminates your responsibility and liability as the estate executor.

Important decisions need to be made regarding the estate, taxes and distributions. Seek the advice of an estate planning attorney.

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