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Serving As Executor: Duties and Responsibilities

American poet Edgar Guest wrote a verse called "The Executor." His poem refers to two friends, one so fond of the other that he made the friend his executor. The poem describes the demands of the role, and ends with the tired executor friend saying:

"Now when I die I'll never ask,
A friend to carry such a task;
I'll spare him all such anguish sore,
And leave a hired executor."

What is an executor? How are they chosen? Is it as hard as the poem suggests?

Executor's Role

In making a will, people tell how they want their property distributed after they die. An executor is the person named in the will to carry out the instructions. If a person dies without a will, a court appoints someone to perform the same duties of the executor. That person is called an administrator (some areas now refer to both an executor and an administrator as the "personal representative").

Often a person chooses for his or her executor a trusted friend or advisor. So being named executor is a honor, but the responsibilities are serious.

By accepting the role, an executor acts under court supervision and receives authority from the court to manage the deceased person's estate. The executor opens a bank account for the estate and informs others (like brokerages, insurance companies and other financial institutions) of the appointment so they know who to contact regarding the decedent's financial matters. The executor also notifies heirs and others affected by the will of the probate proceeding.

After these steps, the real work takes place. The executor searches for the assets of the person who died, including bank accounts, stocks, retirement accounts, land and insurance. These must be collected, managed, accounted for and properly valued. The executor must pay the creditors of the deceased using the estate's funds. The executor decides how to invest funds and also makes sure estate and other tax returns are filed.

There are also other details the executor must handle. Government agencies must be notified of the death, and credit card and other financial accounts need to be terminated. The executor will take care of these tasks. The executor may also have been given other duties by the person who died, such as deciding which organizations should receive charitable gifts.

The executor is also given the duty of distributing the property according to the will's instructions. Some wills ask the executor to distribute everything right away. Others tell the executor to pay portions of funds over time, according to the recipient's needs. The executor will receive requests from heirs, and must decide if they truly need that much money now. This can create tensions.

Once the executor has paid all taxes and creditors' claims, has distributed property in accordance with the will, and has satisfied his or her other duties under the law, the estate can be closed.

Duty of Loyalty

An executor is a fiduciary of the estate. This means he or she has a legal duty of loyalty to the beneficiaries and the creditors of the estate. The executor must be prudent in dealing with the estate's property, and keep all property separate from his or her own assets. In addition, the executor is not permitted to profit from the estate other than receiving his or her compensation.

Executor Fees

Executors usually are paid for their services. Every state has its own rules for paying executors. The rules are designed to protect estates from excessive fees. In some states, executors receive a fee based on the estate's value. In other states, executors are entitled to a "reasonable" fee. What is "reasonable" depends on many factors, including the time spent, difficulty and skill needed to probate the estate, fees paid to other executors for similar services, the type and value of the estate's property, and the results the executor obtained for the estate.

How Lawyers Help Executors

Executors usually do not act alone. They hire a lawyer to advise on administering the estate, dealing with heirs, reporting to the court and other matters that arise. In this

way, the lawyer serves as a source of information for any questions or issues that arise in probating the estate. Handling the duties of probating an estate can be complex, and undoubtedly issues will arise. Lawyers experienced in handling probate matters can help resolve these issues and questions.

A lawyer can also help an executor by taking over the duties of probating the estate. For example, at the outset the executor may think that he or she can handle the probate, but then quickly learn the task will be too cumbersome. The executor can then turn over his or her duties to a lawyer.

Serving as executor is a serious responsibility. People who make a will should carefully consider who they want to select as their executor, and should discuss this with the person in advance. Choosing an executor is one of the most important estate planning decisions you will make, as selecting the right person can help make sure the probate process goes smoothly and without unnecessary delays. Whoever you select, make sure that person is well organized, trustworthy and familiar with your family situation. Your will should also name an alternate executor in case the first person selected is unavailable to serve or later decides not to serve. Anyone asked to accept the role of executor should consider the duties of the task. If questions arise when carrying out these duties, legal assistance should be obtained.

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