

STAFFING YOUR ESTATE PLAN

By Christine Fletcher, Partner - Private Client Group

A good estate plan can significantly reduce taxes, streamline transfers of assets after your death, sidestep costly public probate proceedings and minimize family squabbles over inheritance.

But if you don't have the right "staffing" to execute the plan properly, you are courting disaster. Selecting strong candidates to act as executors, trustees, financial planners and advisers, accountants, lawyers and tax experts can be the difference between the success or failure of your estate plan execution.

Here are a few key considerations when selecting an executor (also referred to as a "personal representative") for your estate, as well as an executor's responsibilities and positive attributes..

RESPONSIBILITIES OF AN EXECUTOR

When you choose an executor, you should choose someone who is capable and reliable enough to carry out the tasks of the job which include:

- Identifying, collecting and preserving estate assets
- Ascertaining and paying bills and obligations of the estate
- Filing income and estate tax returns and paying the taxes due
- Discovering debts owed to the estate and pursuing payment on them
- Identifying and enforcing private, contractual or intellectual property rights of the estate
- Dealing with unexpected legal and financial issues
- Distributing assets of the estate to beneficiaries

ATTRIBUTES OF A GOOD EXECUTOR

Your executor should have certain attributes that are necessary to perform the required tasks, including:

- Integrity
- Decision-making ability
- Business sophistication (especially important for estates involving family businesses)
- Record-keeping and reporting skills

WHO NEEDS ESTATE PLANNING?

For many people, the value of an estate plan will far exceed its cost due to tax savings. Furthermore, estate planning is not just for individuals who have a net worth in excess of state or federal exemptions (currently set at \$1 million for MA, and \$5.34 million for the U.S., but subject to change). The following people can greatly benefit from estate planning with experienced legal counsel:

- Individuals or couples who have dependents or beneficiaries with special needs.
- Adoptive parents, who need to make special provisions for inheritance that differ from state law provisions applicable to those without a legally enforceable plan.
- Other non-traditional families, such as those of unmarried couples or domestic partners.
- Married persons who have previous spouses or children from a prior marriage.
- Those who have special charitable goals.
- Those who have ownership shares in a closely held business that could suffer grave disruption from an inheritance battle or significant death taxes on their estates. Such people can benefit from a well-structured agreement providing for life insurance on key owners in amounts adequate to fund the purchase of the decedent's shares, according to valuations set by agreement.

FOR MORE INFORMATION:

MA: 617.345.3000

NY: 212.231.2237

RI: 401.831.8330

To learn more about our **Trusts & Estates** practice, visit burnslev.com.

Continued...

- Perseverance in dealing with paperwork and legal process
- Sensitivity in dealing with others on matters that can be emotional and confusing
- Availability in terms of time and relevant locality
- Impartiality and lack of any conflicts of interest

Some people ask us if an executor should be an attorney. While it is not legally required, a lawyer may well prove to be your best choice for executor. Trusted family counsel often has all of the necessary attributes, as well as familiarity with some or all of your chosen beneficiaries, financial service professionals, trustees and advisers. Your estate counsel should also be experienced at identifying and dealing with potential disputes before they get out of hand.

A sophisticated family member might also be qualified to act as executor and might do so without accepting an executor's fee. But those who have served as an executor will tell you it is a thankless job, and one that can breed distrust among family members if the executor is also a beneficiary.

SPECIAL CONSIDERATIONS FOR SOME ESTATES

You may also want your executor to have experience dealing with any special issues that may be unique to your estate. For example:

An estate involving a family business should have an executor with business management skills and relevant industry knowledge, but should not be a business partner with a potential conflict of interest.

The estate of a writer, musician or artist should have an executor who is able to deal with licensing agreements, copyrights and other intellectual property rights.

An estate with extensive real estate holdings should have an executor with the ability to oversee management, maintenance and conveyance of properties.

LEGAL REQUIREMENTS RELATED TO EXECUTOR SELECTION

Some states impose legal restrictions on who can serve as an executor. Also, some states require that the executor be bonded with a corporate surety. Your attorney can help you with this and other aspects of your executor selection process.

ABOUT BURNS & LEVINSON

Burns & Levinson is a full-service law firm with over 125 attorneys based in Boston. The firm has grown steadily and strategically throughout the years and has become a premier law firm with regional, national and international clientele. In addition, the firm has a wholly owned subsidiary office in Montreal, Quebec, to service its Canadian clients.

The firm has experience in:

- Estate planning
- Probate and trust litigation
- Divorce and other family law issues
- Tax
- Labor and employment
- Government investigations and white collar crime defense
- Real estate
- Corporate
- Business litigation
- Finance
- Venture capital
- Private equity
- Bankruptcy
- Lending and leasing
- Design & construction
- Environmental
- Intellectual property

OFFICE LOCATIONS:

- Boston (HQ)
- Andover
- Hingham
- New York
- Providence
- Waltham

Visit burnslev.com for more information.