

CHOOSING AN EXECUTOR FOR YOUR WILL



Your executor will be responsible for seeing that the terms of your will are carried out after your death.

Choosing an executor can be stressful, particularly if you have more than one child, a complicated estate (i.e., many assets or debts), or you anticipate conflict among your beneficiaries.

Here are some guidelines you can follow to facilitate the process.



PROBATE: A BRIEF OVERVIEW

If you execute a will, after your death your will is revealed to the court in a probate proceeding. Probate is the process by which the terms of your will are presented to a judge, and your assets are distributed to your beneficiaries following payment of your debts.

Your assets, including real property and personal possessions, comprise your estate. The legal documents issued by the court clerk that spell out the executor's authority over your estate are referred to as letters testamentary. They are issued immediately after the court approves of the executor, and the executor files a security bond if one is needed.

During a probate proceeding, the executor designated in the will files a petition in Court together with the original copy of your will. The petition states the date of death, the beneficiaries named in the will, the heirs-at-law in the event the will is invalid, and an estimated valuation of the estate.

ESTATE PLANNING

AN EXECUTOR'S DUTIES

Your executor (also sometimes called your personal representative) is responsible administering your estate. The executor's duties include:

1. Petitioning the court to admit your will to probate.
2. Making an inventory of all assets in your estate.
3. Determining what the assets are worth, getting appraisals if necessary.
4. Safeguarding and managing the assets until they are distributed.
5. Selling assets if necessary to pay estate debts or distribute the estate.
6. Collecting debts owed to the estate.
7. Appearing in court on behalf of the estate if the estate is a party to a lawsuit;
8. Paying valid creditor's claims.
9. Filing your final income tax return and paying any taxes due.
10. Filing an estate tax return if necessary and paying any taxes due.
11. Distributing the estate to the beneficiaries in accordance with the terms of the will.

DESIRABLE QUALITIES IN AN EXECUTOR

You are looking for three things in your executor. He or she must be someone (1) you trust; (2) who is capable of doing the job; and (3) who is willing to do the job. You want to choose a person who is intelligent, responsible, and well-organized.

The principal qualities that an executor should possess are honesty, organizational skills, and the ability to communicate effectively. You want someone who is financially accountable, stable, reliable and trustworthy. The executor has many responsibilities, some of which can be complex. Although some of the necessary tasks may be complicated (like preparing tax returns or making investment decisions), your executor can hire professionals (attorneys, accountants, investment advisors) for assistance.

One attractive quality in an executor is perseverance in handling bills, particularly those pertaining to hospitals, Medicare, ambulance and doctors concerning a final illness. These frequently require much paperwork, payment, and reimbursement from insurance companies. The person you choose should have the time, and be willing, to deal with bureaucracy and forms.

The location of the executor is another factor to consider. It's best to choose someone who lives in your state as some states have restrictions on out-of-state executors and someone local will find it easier to do the job. If the executor lives reasonably close to where most of the assets are situated, the executor can more easily make court appearances, check mail, and maintain your properties.

ESTATE PLANNING

If you have a living trust, it's a good idea for the same person to serve as the executor of your pour over or back up will and as successor trustee of the trust.

SPECIFIC SUGGESTIONS AND CAUTIONS

FAMILY MEMBERS

The most common executors are spouses, children, and siblings. A trusted child can be a good choice, although sometimes choosing one child over another can cause hurt feelings. In the interest of family harmony, you can name more than one executor, although that may not be the best idea if you think they can't work together.

Although your spouse may be the person you trust most, consider whether he or she will be up for the task. Your spouse may be incapable of fulfilling the requisite duties because of grief, sickness, or disability. In the role of executor, your spouse will have personal liability for any unpaid estate taxes and fines for late filings, even if your spouse has assigned these responsibilities to an attorney.

In lieu of choosing a child or your spouse, it may be better to select a trusted friend.

BENEFICIARIES

It can be beneficial to choose an individual who will get a considerable inheritance under the will. A person who is in line for an inheritance will have an incentive to see that property in the estate is cared for and managed in a timely fashion.

On the other hand, you want to make a selection that is unlikely to cause bickering among family members and will contests. Thus, exercise caution and think about the ramifications of your decision if you anticipate strife among your heirs. In this situation, a beneficiary may not be the best choice.

OUTSIDERS

A better option may be to select someone who has no potential conflict of interest, meaning someone who will not inherit under the will. In so doing, you minimize the likelihood of will contests brought by dissatisfied relatives who might hurl accusations of cheating against the executor. If you possess a sizeable estate, there are likely to be more conflicts, and thus, you should think about designating an outside executor.

ESTATE PLANNING

INSTITUTIONS

You could name a bank or financial institution, but many estate planners advise against this choice, unless you have no other options, because of the impersonal nature of the service and the fees the institution will charge.

WILLINGNESS

Talk with the person you wish to designate as executor of your will. Find out whether the person is willing to serve, and if so, you can inform that individual of the whereabouts of your legal documents and holdings.

You may also want to discuss your decision with the family members you did not choose. Offering them a rational explanation for your choice may resolve their disappointment. You may even find they are relieved not to have the burden.

CHOOSING AN ALTERNATE EXECUTOR

Be mindful of the possibility that although the person you chose to be your executor agreed to fulfill that responsibility, he or she may refuse to accept the appointment when it is time to carry out the required duties. Thus, it is best to name alternate executors. If you do not designate any alternate executors, and your original executor declines the appointment, the court will select an executor for you, and the court's choice may or may not be to your liking.