The role of an executor: What you need to know

Throughout your life, you may be approached by a family member or friend to act as an executor of their estate. While it's flattering to know that you are so highly regarded, you should nevertheless pause for a moment and think carefully before you decide to accept this very important role, particularly if you have not acted as an executor before. This article outlines some of the major issues that you, as a potential executor, should consider. The information is general in nature, and is not intended to be a substitute for legal or professional advice.

Accepting an appointment as an executor

Within your role as an executor (or liquidator in Quebec), you are entrusted with the responsibility of administering an estate by carrying out the wishes of the testator (the individual in whose name and request the will is created) as expressed in the will. Although potentially rewarding – both emotionally and financially – being an executor can also be complicated and time-consuming. Before you decide to take on this role, give some thought to the following caveats:

1) Potential complexity of the estate
Estate administration has become increasingly complex. For example, the estate under your administration may involve assets in different countries, beneficiaries from different marriages and/or sophisticated investment and business interests. It's a good idea to make sure you understand these parameters before accepting the appointment of executor.

2) Your availability and willingness
Depending on the circumstances, your responsibility as an executor may continue over a period of years. This is especially true if you have also been called upon to act as a trustee for trusts created in the will. As an executor or trustee, you are required to carry out all duties personally, and usually are not permitted to delegate your responsibilities. Therefore, make sure you have an adequate amount of time, energy and ability to devote to this serious task.
3) Your knowledge in business, investments and tax matters
As an executor, you may be called upon frequently to exercise your business judgment and knowledge in certain circumstances such as: the realization of estate assets, making investments on behalf of the estate, minimizing the taxes payable by the estate and preparing estate tax returns. While you can, and in many cases should, retain the services of legal and tax professionals to assist you in these areas, you should still make sure you are comfortable dealing with such matters.

4) Your ability to deal with beneficiaries
Perhaps the most difficult task for an executor is dealing with the family and domestic politics that can arise in the course of estate administration. Executors are often called upon to make decisions that have financial, monetary and tax consequences for beneficiaries and for the estate. Many decisions may require that you strike a delicate balance among the various beneficiaries and their competing interests. So be prepared to act in an impartial and objective manner to best balance the needs of all beneficiaries, and to mitigate the potential for conflict and hostility.

### Responsibilities of an executor

The responsibilities of an executor are summarized in the flowchart below. You can also review a more detailed list of executor duties, responsibilities and obligations in the article entitled *Executor checklist* which is appended at the end of this article.

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<th>Step 15</th>
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<td>Close estate accounts</td>
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Duties of an executor

An executor is expected to perform duties in the same way that a prudent person would in managing his or her own affairs. The professional practice of acting in the best interests of another party is known as a fiduciary duty. The best way to think about it is that if you act honestly, judiciously and to the best of your ability, you will generally not be held accountable for any losses incurred by the estate.

So in general, try to make sure that you:

- Avoid conflicts of interest by refraining from transactions involving estate assets that result in a profit to you personally
- Exercise all discretion granted to you in a reasonable manner
- Invest trust assets in a prudent and cautious manner
- Act impartially and objectively with all beneficiaries

Preparing for the role of an executor

To be an effective executor, brush up on your knowledge of tax rules as they pertain to deceased taxpayers and improve your understanding of the fiduciary obligations of executors to beneficiaries.

You should then sit down with the person who appointed you as his or her executor and go through their will to gain better insight of that person's wishes. You may want to inquire about their burial and funeral preferences if not specifically outlined in the will. Also, suggest that the testator prepare an inventory of their assets and liabilities. This list will be very helpful in identifying the location of the items when the time comes. A handy way for storing this information is with AIM Trimark's Your Estate Record Keeper, which can be ordered from an advisor.

It may also be a good idea to meet with the person's professional estate management team including their lawyer, accountant and advisor. With these professionals, you can discuss their roles in helping you settle the estate.
Professional assistance

It is strongly suggested that you seek the assistance of a lawyer and/or accountant to help you carry out your duties as an executor, particularly if you feel overwhelmed or if you don’t have the time or skill to conduct all the administrative tasks. If a third party assumes some of your functions, your compensation as an executor may be reduced as a result. Keep in mind that executors are generally not permitted to delegate their duties, so if you do decide to distribute some of your functions, consult a lawyer to make sure that the duties you are sharing are permitted by the will or by law.

Renouncing executorship

You can renounce your position at any time provided you have not started to act on behalf of the estate. Once you become involved in estate affairs, it may be too late to forfeit your position, and you also risk personal liability arising from any improper estate administration.

It may also be difficult to resign after obtaining letters of probate, unless the will specifically allows it or you obtain a court order.

Letters of probate

Probate is a legal term that simply refers to the process whereby a court-of-law verifies your authority as an executor. This authority is stipulated within the will, which the probate process simply confirms.

Whether or not probating the will is required varies by the nature of the case. For example, probate may be required as a result of statutory requirements (i.e., real property), or by request from a third party (i.e., financial institution) that seeks assurance that they are dealing with the rightful executor. If the estate you are administering is relatively small and uncomplicated, probate may not be necessary.

One benefit of probating a will is that it may protect the executor against personal liability. If you as the executor choose not to probate a will, and that will is subsequently determined to be invalid, the newly appointed executor may look to you personally to reimburse the estate for any actual losses incurred or gains forfeited by the estate during the period it was under your administration.

Also, the law in most provinces enables any dependent of the deceased who feels inadequately provided for by the will’s instructions to apply to the court for support from the deceased’s estate. This request must be filed within a certain time frame, usually from the date probate is granted, and not the date of death. Thus, distribution of estate assets before this period has passed is not recommended. Probating the will can prevent this uncertainty from occurring.
Allotted time frames for estate settlement

It’s recommended that executors work swiftly and expeditiously in settling the estate. It’s best to have the estate settled within one year from the date of the testator’s death unless the will provides otherwise. This is known as the executor’s year. If it takes longer than one year to settle the estate, legal precedent shows that financial penalties may be imposed.

Authorized investments by a trustee

There are some circumstances, particularly if you are also named trustee of trusts created in the will, in which you may be required to invest in trust assets. Unless the will specifically sets out what you can invest in, you are generally not restricted if you comply with the prudent investor/person standard as set out in the legislation of your province. It is recommended that you consult a lawyer in your province to discuss your obligations in this case.

Executor compensation

As an executor, you are entitled to some compensation for your efforts. In terms of the nature and amount of your compensation, you may want to discuss this in advance with the person who appointed you and incorporate any agreements into the will. You should also note that any bequest (asset passed on through inheritance) made to you in the will may also be presumed to be your compensation (or a part thereof). Any compensation beyond the basic bequest should be indicated in the will.

If compensation was not discussed in advance, then the amount of compensation you may be entitled to can be based on the following factors:

1. Size of the estate
2. Care and responsibility involved
3. Time required in performing the duties
4. Skill and ability shown
5. Success of the work performed

Closing thoughts

The objective of this article is to offer some insight into what can be expected and experienced within the role of an estate executor. Although an executorship is a serious and potentially time-consuming role, it can also be a personally gratifying one as well. The more preparation and honest consideration you give to the role of executor, the more effective you will be in fulfilling the accompanying duties and responsibilities, and achieving the final wishes of a loved one or esteemed colleague.
Executor checklist

The following steps are a detailed, action-oriented breakdown of many of the duties, responsibilities and obligations of an executor. Not only will this list provide you with a starting point and chronology of events (i.e., identify assets, administrate assets, distribute assets), it can also function as a cross-checking tool to confirm completion of many of the required steps.

1. First steps

- Locate and review contents of the will
- Check the will and driver’s licence for any instructions on organ donation
- Make the necessary funeral arrangements if pre-arranged funeral arrangements have not been made
- Ensure that urgent financial needs of immediate family members can be met
- Retain the services of an estate lawyer to assist with estate administration
- Identify the names and addresses of all beneficiaries and notify the beneficiaries of their interest in the estate
- Arrange for care and adoption of pets

2. Locate and identify

*Identify all assets owned by the deceased*

- Check for the existence of an inventory list of all assets
- Contact individuals (i.e., family members, advisor, lawyer, accountant) familiar with the affairs of the deceased
- Review previous income tax returns

*Take custody of the estate assets and arrange for adequate insurance coverage for their protection*

- Take possession of any cash, securities, other valuable papers, jewelry, property deeds, mortgages, insurance policies and other title papers and documents
- Obtain valuations for household goods, fine works of art, collections, furniture and automobiles, and arrange for adequate insurance coverage of these assets and on any real estate owned by the deceased

*Notify banks, financial institutions and other entities where deceased had dealings*

- Contact Canada/Quebec Pension Plan to cancel pension benefits and apply for death benefits
- Contact Social Development Canada to cancel Old Age Security benefits
- Cancel outstanding credit card accounts and return social insurance card, passport, driver’s licence and health insurance cards
- Cancel pending newspaper and magazine subscriptions, telephone, cable TV, Internet, club memberships and other such services (i.e., grass cutting and snow removal services)
3) Secure and safeguard assets
- Open an estate bank account to deposit income and proceeds from the realization of estate assets, as well as to pay any estate expenses
- Prepare an inventory of estate assets and liabilities
- Consult a lawyer to see if the will needs to be probated
- Determine whether any active business should be continued or wound up
- Advertise for creditors

4) Administration of estate assets
- Review the will and discuss with a lawyer, advisor and/or accountant to see if steps can be taken to maximize the value of the estate
- Determine which assets are to be transferred to beneficiaries in-kind and convert remaining assets to cash and deposit to an estate account
- Consult a lawyer, accountant and/or advisor to discuss appropriate investments of surplus cash until the estate is finalized
- Ensure that all valid debts of the estate are properly settled and obtain receipts for all amounts paid
- File income tax return for the year of death and for any prior years in which a return was not filed
- Obtain tax clearance certificate from Canada Revenue Agency
- Prepare interim release and make interim distribution to beneficiaries if appropriate
5) Distribution of estate assets

- Secure final releases from estate beneficiaries prior to distribution
- Distribute personal items as instructed in the will and obtain receipts
- Pay legacies and transfer bequests as provided in the will and obtain receipts
- Establish trusts as directed by the will and invest the trust assets accordingly
- Distribute any remaining balances to residual beneficiaries in accordance with the will
- Prepare an account of all assets, liabilities, expenses and distribution of estate assets and present it to the beneficiaries for approval; discharge or submit the account to court for a formal approval
- Close the estate account once the estate is settled

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* As at March 31, 2005

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