

**Tax, Retirement & Estate
Planning Services** **Investment Insight**

The role of the executor – more than meets the eye

Appointing an executor may be one of the most important decisions related to an estate plan. Being trusted as an executor to carry out someone's wishes after they have passed can be one of the biggest responsibilities an individual can take on. Estate administration is ever evolving and is more challenging today than ever before. Understanding what may be in store for a future executor can be helpful for those choosing one and those being chosen for this critical role.

What is an executor?

An executor is often a person or can be a trust company named in a will. The executor collects and oversees estate assets, pays the deceased's debts, and divides what remains of the estate among the beneficiaries. The beneficiaries are named in the will to inherit the estate. There can also be more than one executor named (co-executors or alternate executors).

Duties and liabilities of an executor

The duties of an executor can be broad and span multiple years. As a starting point, our Executor Checklist (MK2982) provides a robust list of tasks for your reference to help keep you on track. The process starts when an individual passes away. The executor may be a part of the funeral arrangements and collecting important documentation like the deceased's will and tax returns. Assets, including financial, physical and personal effects will need to be accounted for and safeguarded on behalf of the estate's beneficiaries. Contacting various third parties can be important and time consuming to ensure all bills are paid, accounts closed, and insurance claims are made.

Before distributions can be made, it is important for the executor to address the deceased's creditors and complete all tax returns. Should any claims be made against the estate, for example, dependent's relief, the executor must remain neutral when working towards a resolution. Generally, the executor is not personally liable for the deceased's debts or any financial obligations of the estate. However, an executor can be found personally liable if the estate assets are distributed to beneficiaries before payment of all estate debts. In such cases it is important to resolve all outstanding estate debts before making a final distribution to beneficiaries.

At various points in the estate administration process, the executor may find that professional help is required. Where appropriate and necessary, the executor can enlist the help of an accountant or lawyer to help with tax returns or legal issues that may arise. Such professional services are expenses for the estate and not for the executor personally.

Finally, after the assets of the estate are collected, the debts and taxes are all paid and any claims against the estate are settled, the executor can distribute the remaining value of the estate to the beneficiaries according to the instructions in the will.

Insolvent estate and declining to act

What happens if the estate does not have enough assets to cover the deceased's liabilities? When an estate is insolvent, provincial legislation may dictate the order of distribution from the estate including prioritizing the payment of various expenses. Given the significant challenges that come with an insolvent estate, an executor may consider simply declining to act.

An executor can decline to act for solvent estates as well. It is important for an executor to make this decision prior to acting in any capacity for the estate. The process for declining (or being removed as an executor after acting) can be difficult and costly. This can be avoided by having a frank discussion with the individual considering naming you as executor while they are alive.

Executor compensation

An executor is entitled to compensation which would be taxable income for them. Generally, this compensation is a percentage of the estate's assets, ranging from one to five per cent of the deceased's estate. Fair compensation for an executor's services are based on many factors, including (but not limited to):

- The gross value of the estate
- Complexity of the work involved
- Amount of skill, time and specialized knowledge required

Clarifying executor compensation in one's will can avoid potential conflicts with beneficiaries and may help reduce the tax burden for the executor.

Considerations for choosing an executor

In deciding who should be your executor consider the following:

- Do they have the time to devote to estate administration?
- Are they willing and able?
- Do they possess integrity, objectivity and good judgment?
- Are they financially and administratively inclined?
- Are they familiar with your affairs?

Ideally, your chosen executor will be a resident of the same province as you. Having an executor living in another province or country can add delays, complexity and costs to your estate administration. It can also make the already difficult role of executor even more challenging.

Individuals such as a spouse, family member or friend may be cost effective choices, but consider whether they have the skills to administer your estate and manage the expectations of your beneficiaries. A lawyer, accountant or trust company may cost more, but they may have the skills and resources necessary to manage all the tasks before them.

The role of the executor is growing in scope and complexity. Estate administration may take years to complete. Assets of the estate may be numerous and located in multiple jurisdictions around the world. As such, care should be taken to choose an executor (including co and alternate executors) that is willing and able to see your wishes through. Executors, you are not alone. You can enlist the help of professionals to guide you through the challenging aspects of the estate. Remember, the role of the executor is a critical one; at times rewarding, but not without its challenges.

Understanding what may be in store for a *future executor* can be helpful for those choosing one and those being chosen for this *critical role*.

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