

This Could Be the Toughest Job You'll Ever Inherit ...

An Estate Executor's Top Duties

by Alexandra Armstrong, CFP, and Kelly Wright, CFP



We often see our clients appoint family members to administer their estates. Although this can work well, frequently the person chosen to carry out this duty may be unaware of the complexities in this process. There are not only potential issues with siblings and family dynamics, but the transactions are very arduous. If you're asked to administer someone's estate, it's important you understand that if you agree, you'll have extensive responsibilities and you may wish to decline.

A personal representative, also known as an executor, has several critical roles as the administrator of an estate. The executor has a duty to the person who has died to carry out his wishes and also a duty to the beneficiaries of the estate to put their interests ahead of his or her own. The decedent's wishes are supposed to be clearly stated in the will.

If there's a trust created by the will, the trustee is responsible for administering the assets held by that trust. As a word of caution, failure to adhere to these duties and responsibilities can result in the filing of lawsuits against the personal representative of the estate.

Some estates are easy to administer. In some states, the law allows for the filing of a small estate if the assets are under a certain threshold. For instance, in Maryland, a small estate is any worth less than \$50,000. At the other end of the spectrum, estates that involve lots of assets, creditors and tax liabilities might not be settled for years.

In this article, we use the more commonly used term personal representative, but some states use the term executor instead. Whatever term is in the legal document, each has the same responsibilities.

In the Beginning

The PR's first responsibility is to arrange for the funeral and burial of the deceased. Next, the PR must find and manage the estate's assets. This task can be extremely complex. The PR is personally responsible for finding all assets and liabilities of an estate as well as tabulating all income and expenses. If there's personal property that isn't directed to a specific beneficiary in the will, the PR must manage the process of selling it and adding the

proceeds to the estate. Then the PR must file an initial account of the estate's financial activity.

The PR may and often should seek professional assistance, such as an accountant or attorney, to complete these forms.

Additionally, to probate an estate, the PR must defer to how each asset is owned. Retirement assets, life insurance, accounts that are payable on death (POD) or transferable on death (TOD) and accounts in a trust are part of the estate's assets for estate tax purposes but don't go through probate and aren't part of the probate estate. These assets aren't administered by the PR but are transferred by contract.

Expenses incurred in protecting or administering the estate would appear on the accounting and are subsequently paid by the PR out of the estate. After the initial accounting, the PR may have to file subsequent accountings at various intervals.

For example, here's a list of what's needed in Maryland to open an estate:

- decedent's last will and testament
- death certificate
- funeral contract/bill
- approximate value of assets in the decedent's name alone
- title to decedent's automobiles and other motor vehicles
- names and addresses of people interested in the estate
- regular estate forms or small-estate forms (if the estate is subject to administration is less than \$50,000)
- any applicable filing fee

Also interesting to note is that Maryland mandates that every PR obtain a bond to secure the payment of all debts, inheritance taxes, probate fees, court costs and inheritance taxes, even if the bond requirement is expressly waived by the will.

Paying Creditors

The PR must give legal notice of death to known cred-



itors and potential creditors. Creditors generally have a prescribed time in which to file claims against the decedent's estate. Upon the expiration of this period, the PR must pay all legitimate claims against the estate. Prior to payment of any bill, the PR is responsible for verifying that all claims against the estate are legitimate.

The PR must collect all the assets to the estate and from those assets pay all the deceased person's bills. This will include funeral expenses and hospital expenses not covered by insurance.

Paying Taxes

Another fundamental duty of the PR is to pay any taxes owed by the deceased and the estate. The PR is responsible for preparing and filing all applicable state and federal income tax returns for the decedent up until date of death and on behalf of the decedent's estate thereafter.

The PR is also responsible for filing all applicable state and federal estate and gift taxes. Each return has a specific due date.

A tax return often may be required to be filed even when no taxes are due. If the estate is valued at more than \$5.43 million as of 2015, there may be a federal estate tax to pay.

There also may be state estate taxes due depending on the decedent's state of residence.

The PR is responsible for balancing the tasks of making prompt distributions to beneficiaries while retaining enough to fund taxes and the estate's other expenses. It's important to note the PR is personally responsible for paying any taxes due.

Distributing the Assets to the Beneficiaries

The PR should distribute the estate's remaining assets as soon as possible. The PR may make partial distributions at any time in the probate process as long as he's sure there will be sufficient assets left to pay all

the creditors, including the Internal Revenue Service.

Once he's distributed all the assets to the beneficiaries as specified in the will and provided a final accounting of the estate, the estate can then be closed and terminated upon the probate court's approval. At that time, the executor will be discharged from his duties as the PR.

Compensation

PRs are entitled to compensation. Sometimes it's a percentage of the estate, other times it's determined or approved by the probate court that oversees the administration process. In the case of a family member, the PR sometimes waives any compensation. (But if the estate is complex, we'd advise him to charge for his time!)

Wills and Trusts

It's important to note the difference between a will and a trust. Assets in a trust aren't administered by the will, but rather by the trust document. The trustee is responsible for managing all assets of the trust, similar to how a PR is responsible for administering any asset in the probate estate.

There's a critical difference: Assets transferred by trust aren't a matter of public record, whereas any asset in a probated estate is a matter of public record. For privacy reasons, some people elect to transfer property by trust rather than by will.

The Selection of the Personal Representative

Sometimes we see a client appoint two or more PRs to administer an estate. In our opinion this is a recipe for disaster.

The two PRs may not agree on an issue or they may live in other states and getting their signatures on multiple documents is difficult. We recommend a client appoint the person he thinks would handle the estate most efficiently, ideally geographically close to the decedent's residence.

It's a Big Responsibility and a Lot of Work

The purpose of this article is intended to inform you that the task of being a PR can be complex. If you do agree to be a PR and the estate is somewhat complex, we strongly recommend you seek legal and tax counsel to make sure all the rules are followed and proper procedures carried out. The fees can be charged to the estate and the estate-planning lawyer and tax adviser handle these issues routinely. ■



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