

How to be an Executor

By Claire E. Toth, JD, MLT, CFPTM
Point View Wealth Management, Inc.
ctoath@ptview.com
(908) 598-1717

Administering an estate for a spouse, a parent, or another loved one is both an honor and a big responsibility. Even if you are never called upon to be an executor, you should understand what is involved. After all, someone will have to handle your estate eventually. Knowing what is involved helps you make it easier for your executor. Those who will inherit should also understand the process.

When a person dies—that's the decedent—the executor is in charge of the assets governed by the will. Not all of the decedent's assets are governed by the will. Insurance policies and retirement plans are governed by their beneficiary designations. If the decedent owned assets (typically a house or brokerage account) in joint tenancy, the property automatically goes to the co-owner. That is most common with married couples.

As for the rest, the executor is in charge. The executor must locate and collect the assets, pay the bills and the taxes, determine who is entitled to the remainder, and distribute it to them.

Step one is to go to court and open the estate—a process called probate. The procedure varies from state to state and even from county to county. In New Jersey, it's a very simple process. The executor must have a death certificate (usually provided by the funeral home) and the original of the decedent's will. The probate court will issue a document called Letters Testamentary, giving the executor the legal power to deal with the decedent's assets. Order several copies of both the death certificate and the Letters Testamentary; together they authorize any financial institution or other entity to deal with the executor. The final preliminary piece is to obtain a Tax Identification Number—the estate's analog to a Social Security Number. This can be done online.

Armed with these tools, the executor is ready for business. In many ways, probating an estate truly is like running a business. Among the steps the executor takes are:

- Locating and notifying the next of kin that the estate has been opened. This includes those named in the will and those who would inherit under state law but are excluded from the will. The executor must give each of these people a copy of the will.
- Notifying and paying off the decedent's creditors. These can usually be determined from the financial records, but it's also common practice to publish a legal notice. Creditors have a set period of time—nine months in New Jersey—to submit bills to the executor.
- Notifying other organizations and terminating or collecting benefits. For example, the executor must notify the Social Security Administration and pension payers to cease (or modify) benefits. The executor should file forms with the IRS notifying it that the executor is in charge and perhaps asking for a speedy determination of any tax liability. He or she must also locate insurance policies and put in claims for death benefits.

- Contact the decedent's advisors—the lawyer, accountant, financial advisor, insurance agent, and so forth. They can be invaluable in assisting the executor.
- Identifying and protecting assets. This step can range from the simple—moving the decedent's checking account into a new one for the estate—to the very involved—managing or winding up a business, maintaining and selling a residence. Sometimes there are collections to be managed or assets that are difficult to locate. If the executor is dealing with tangible assets, he or she should carry insurance on them. New Jersey imposes an estate tax if the decedent had a net worth of at least \$675,000. In that situation, the state freezes the decedent's financial accounts, to ensure the taxes are paid. The executor must take steps to unfreeze half the value of the accounts (the maximum amount that can be unfrozen) in order to manage assets, support a surviving spouse, and otherwise perform his or her job. Other states do not do this.
- Preparing and filing tax returns. The executor must file the decedent's final income tax return, the estate's income tax return, and perhaps one or more estate tax returns. Some states—New Jersey among them—impose an inheritance tax along with an estate tax. The inheritance tax applies if those who inherit are not direct descendants, parents, or a spouse. For example, it applies when assets are left to siblings, nieces and nephews, or friends. Further, if there is an estate tax due, the decedent's will may state that those receiving outside assets—generally retirement benefits—must contribute to the estate tax bill. In that situation, the executor may work with the plan administrator to make sure the taxes are withheld.
- Accounting to the beneficiaries. An executor should—and often must—prepare an accounting, to show those inheriting (and sometimes the probate court) where the money came from and where it went. In the probate process—indeed, in any sort of fiduciary undertaking—the more transparency, the better. A personal accounting program can simplify this, but you can make do with spreadsheets.
- Distributing the assets. Once the creditors and tax authorities have been paid (often with some assets held back, just in case), it's time to satisfy the beneficiaries. Most estates of any size make some distributions before the very end, again holding back some assets to satisfy creditors. When making these distributions, have the beneficiaries sign a refunding bond and a release. The refunding bond is simply a written promise to return the assets distributed if an unexpected expense arise and the estate does not have sufficient assets to pay. The release is the beneficiary's acknowledgment that he or she has received everything coming.
- Closing the estate. Once the bills are paid and the assets distributed, the executor should file papers in probate court to close the estate. This is public acknowledgement that the estate is closed and the executor has completed the job.

This sounds like a daunting list, but in many cases it is not. Most often, executors and beneficiaries work amicably together to settle the estate. If you know you will be called upon to act as executor for someone, be proactive about approaching that person and asking to familiarize yourself with assets and recordkeeping. Conversely, as the eventual decedent, review the landscape with your executor and leave a roadmap to simplify the process.