

The Role of the Executor

The deceased's Will is the legally binding expression of that person's wishes for the distribution of his or her property. Your responsibility as executor or executrix is to administer the estate and carry out those wishes.

As executor/executrix, you control all aspects of the estate's administration. This extends from identifying and protecting the deceased's assets, to distributing them to the beneficiaries. In your role, you are legally accountable to the beneficiaries.

1. IMMEDIATE ISSUES

There may be many things that require your immediate attention. These might include finding and reviewing the most recent Will, arranging the funeral and determining if any family members have immediate financial needs.

2. PROTECTING THE ESTATE

Your role includes identifying the deceased's assets and protecting them until final distribution. For example, you may need to arrange for the care of any vacant property, arrange for safe custody of personal valuables and important documents, cancel club memberships, health insurance, subscriptions, credit cards, etc. and ensure adequate property insurance exists.

3. VALUING THE ESTATE

Once the estate has been identified, it needs to be valued. This may include developing a full valuation of household goods, furniture, artwork, automobiles and other personal effects, determining benefits due under insurance policies and pension plans, and preparing a detailed inventory of assets and liabilities.

4. TAX ISSUES

While neither the federal nor the provincial government imposes direct death duties, there are several tax issues that arise when a person dies. As a result, you will need to determine capital gains at the date of death, make the various elections permitted under federal and provincial laws, prepare and file final income tax returns and request clearance certificates.

5. ADMINISTRATION AND DISTRIBUTION

In addition, you will be required to clear the estate and distribute the assets. This may include arranging for probate of the Will, if necessary and settling all claims and debts, investing surplus cash and managing

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the investments to ensure that enough money is available to pay income tax and other liabilities. You should deliver personal property which was bequeathed, discharge any bank or private loans, mortgages or other liabilities, pay any legacies and other bequests, and then distribute the assets to the beneficiaries. They will also require a full accounting of the estate's administration.

Who Should Be Your Executor?

There are several things to consider when pondering the question of whom you should choose as executor or executrix. Your personal situation may have some effect on your decision, but your executor should be someone who:

- > Shares your faith, is trustworthy and agrees with your wishes.
- > Has the capabilities to perform the duties required. A professional executor should be considered in complex estate situations.
- > Is likely to outlive you.
- > Is geographically close to you so that duties may be performed without inconvenience or delay.
- > Is impartial, so if you anticipate controversy, choose someone other than a family member.
- > Whom you have spoken with about taking on this responsibility.

Executor's Compensation

Although most family members and close friends may choose not to be compensated, the law allows these people to charge for their services. The usual percentages are approximately 5% of the value of the estate (2.5% of capital receipts, 2.5% of capital disbursements, 2.5% of income receipts, 2.5 % of income disbursements and 0.2% as a yearly care and management fee).

This guideline is generally followed but in the case of conflict or pressure from the beneficiaries, the courts will establish a "fair and reasonable compensation". A judge will consider the size of the estate, the duties involved with its care, the time required to perform those duties, the skill and ability necessary to do so and the success of the administration of the affairs of the estate.

