

What does an Executor Do?

Let's talk of graves, of worms and epitaphs;
Make dust our paper . . .
Let's choose executors and talk of wills
Richard II, Act III Scene ii

One of the hardest things for a beneficiary to understand is why he has to wait to get his inheritance. Most beneficiaries think that when the funeral is over, it is time to distribute the decedent's property. Not so fast.

If the decedent left a will, the named executor must be sworn in and given authority by the Register of Wills. If the decedent left no will, (or left a will but the named executor cannot serve), then an administrator must be appointed. As used in this column, the term "executor" also includes an administrator.

The executor becomes the actual owner of the decedent's personal estate. During the period of estate administration, the property belongs to the executor. The executor is responsible for gathering and taking possession of all of the decedent's property and safeguarding it.

If grandmother passed away and bequeathed her sterling flatware to you in her will, you are not entitled to the silver until the executor distributes it to you. When grandmother dies, the executor becomes the owner of the silver. The executor will not be in a position to distribute the silver to you until he determines what claims there are against the estate. Creditors' claims and taxes must be paid first. It is always possible that property, including the sterling, would have to be sold to meet estate obligations. If you take the sterling out of the house, whether it was given to you in the will or not, you are stealing.

The executor must value all the assets. For things other than bank accounts and marketable securities, this means getting appraisals. After determining that the estate is solvent, the executor must pay the decedent's debts, expenses of the last illness, funeral expenses, and taxes. Anyone who has a claim against the estate has one year from the date of the publication of the estate notice in the newspaper to come forward. For a period of one year, then, the executor could receive bills or claims against the estate's assets.

The executor must file and pay all taxes. The decedent's final federal and state income tax returns must be filed by the executor. The executor must review prior returns to make sure they were filed, and filed correctly. The IRS is not barred by the one-year claims period to come back to the estate looking for unpaid income taxes. The executor is also responsible for filing federal estate taxes, state inheritance or estate taxes, and federal and state income tax returns for the estate. If there is property that is included in the taxable estate but does not pass under the will (such as life insurance, pension benefits, or joint property), the executor must also value these assets, report them to the tax authorities and pay the tax attributable to them. In some cases the executor must collect taxes dues from the recipients of this property.

There are various tax elections and planning techniques which may save money for the estate. To mention a few, tax savings could come from disclaimers, the choice of a fiscal year for the estate other than the calendar year, making elections regarding the deductibility of administration expenses, making elections regarding the taxation of Series E Bond interest, election of marital deduction treatment, valuing real estate as “special use” property, and electing the installment payment of estate taxes. Obviously, a lay person acting as an executor cannot be expected to know about all these strategies and will need competent advice to make the appropriate decisions. Also it is obvious that the matter of income, estate and inheritance taxes for the estate are going to take time.

Death taxes, both state and federal, must be paid within nine months from the date of death unless the estate can qualify for an extension. Often the actual tax is paid at the nine month date but the tax returns themselves are put on extension. Extensions are available for 6 months, which would make the return filing 15 months after the date of death.

Unlike 1040's, every single death tax return is looked at by IRS or Pennsylvania Department of Revenue personnel. The taxes are not settled until the taxing authority affirmatively accepts the return and the tax and communicates this to the executor.

During the period of administration, the executor must preserve the value of the estate and administer it for the benefit of the beneficiaries. The executor collects income from investments, business interests, and real estate. The collected assets must be invested prudently and, in many cases, estate assets must be sold. These sales are handled by the executor. The executor accounts for all transactions and when all creditors have been satisfied and all taxes paid, distributes the estate to the beneficiaries in accordance with the terms of the will.

An executor is entitled to a fee for the very substantial work and responsibility involved. The amount of the fee will depend on the amount of work performed. Sometimes an individual executor will do a tremendous amount of work, and sometimes she will hire professionals who will do almost all of the work.

Usually the executor hires a lawyer and possibly an accountant to help with the estate settlement. Often the lawyer who wrote the will is hired, but that is not required. The executor is free to hire legal counsel of his or her own choosing. The lawyer advises the executor of their duties, the due dates for various actions, assists with the preparation of tax returns, resolves disputes, makes tax elections, and so forth. The taxation of trusts and estates is a very complex matter and a trained professional can often save the estate substantial dollars in taxes with good post-mortem tax planning.

Being an executor is a job. It carries a lot of responsibility and takes time. Can the person you named as executor handle the task?