

Choosing Your Executor

Your will is the legally binding expression of your wishes for the distribution of your property. The executor's job is to administer the estate and carry out those wishes. Choosing who will be the executor [personal representative] of your estate is one of the most important decisions you will make. The executor has significant responsibilities—some of which may be difficult or confusing; and may have 1-2 years of work that carries not only legal liability, but also the risk of unpopularity with estate legatees. For these reasons, you should give careful thought to your choice of executor. You should always name a second choice [successor executor] in your will in the event your first choice is unable or unwilling to serve, or predeceases you. If you don't make a choice, the probate court will!

- **Things to consider when choosing an Executor**

- Trustworthiness—do you trust this person with the important task of carrying out your wishes?
- Capability—can this person handle the complexities of finance, investment, tax and legal requirements?
- Impartiality—can this person remain impartial during any controversy or conflict among family members?
- Age—is this person likely to live at least 5 years longer than you?
- Proximity—does this person live nearby so that executor duties can be performed promptly?
- Willingness—is this person willing to take on this responsibility?
- Understanding—does this person understand what's required?

- **Primary responsibilities include, but are not limited to:**

- **Deal with immediate issues**

- ◆ Find the will and file it with the probate court as required by law [This officially recognizes the will and legally confirms the executor appointment]
- ◆ If the estate contains property in more than one state, each state needs to have a copy of the will filed
- ◆ Locate and notify all legatees included in the will
- ◆ Obtain certified copies of death certificate required to fulfill executor duties [the funeral home will normally order these]
- ◆ Establish an account from which bills can be paid for funeral expenses, legal fees, utilities, etc.
- ◆ Establish interest-bearing account to hold proceeds from liquidation of assets prior to distribution.
- ◆ Assist with funeral arrangements if necessary

- **Protect the estate**

- ◆ Identify and assemble/take custody of all assets of the estate—segregate them from all other assets
- ◆ Arrange for the care of any property, including making sure there is sufficient insurance where needed
- ◆ Arrange for safe custody of personal valuables and important documents
- ◆ Notify all known creditors of the deceased
- ◆ Cancel credit cards, subscriptions, memberships, etc. as appropriate
- ◆ Hire attorney, accountant, or other professionals to provide specialized services; executor must provide appropriate oversight
- ◆ Collect any debts due to the estate
- ◆ Deal with any property owned out of state
- ◆ Maintain clear and accurate records of activities, expenses, etc.
- ◆ Establish and maintain communications with all beneficiaries
- ◆ Notify issuers of insurance policies, IRA accounts, etc.

[continued]

- **Value the estate**
 - ◆ Prepare detailed inventory of all assets and liabilities
 - ◆ Obtain a full valuation of all assets as of date of death
 - ◆ Determine and obtain any benefits due under insurance, etc.
- **Deal with tax issues**
 - ◆ Determine capital gains as of date of death
 - ◆ Make various election decisions permitted under federal and state law
 - ◆ Prepare and file final income tax returns
 - ◆ Prepare and file necessary federal and/or state estate or inheritance returns
- **Administration and Distribution**
 - ◆ Arrange for probate of the will if necessary
 - ◆ Settle all claims and debts against the estate
 - ◆ Manage investments and keep cash on hand so that money is available to pay income tax and other liabilities
 - ◆ Deliver any personal property bequeathed to individuals and obtain appropriate receipts
 - ◆ Discharge any loans, mortgages or other liabilities
 - ◆ Distribute assets to the beneficiaries
 - ◆ Prepare regular accountings of the estate's administration for the beneficiaries
 - ◆ Liquidation or sale of assets prior to distribution
 - ◆ Retain estate records for required period of time [often as much as 10 years after death]
- **Potential Legal Liability**
 - Imprudent management of estate investments
 - Self-dealing or conflicts of interest
 - Failure to properly manage real property
 - Executor mismanagement of estate accounts
 - Improper delegation of duties
 - Actions taken without authorization or approval
 - Failure to comply with the terms of the will
 - Violation of any applicable law
 - Failure to properly discharge any duties or responsibilities
 - Abuse of any powers

Many individuals who are named as Executor hire an attorney who is more familiar with the issues to perform most of these functions. While this adds cost to the administration of an estate, it may be more prudent than attempting to 'go it alone.' It is important to note that Covenant Trust Company and its Financial Services Representatives may generally not serve as Executor or Personal Representative. Covenant Trust Company does provide trustee services for various types of accounts.

This information is provided for purposes of illustration and education only, and is not intended as legal or tax advice. You should always consult your attorney and/or tax professional for information specific to your situation.



8303 West Higgins Road, 6th Floor
Chicago, IL 60631-2941
800.483.2177 • 847.583.3200
www.CovenantTrust.com