

Being an Executor

ESTATE PLANNING

Many of us have received a request from a friend or family member to act as the executor of their estate. Others may anticipate such a request in the future and some of us may already be acting as an executor. For all of us in these situations, the following questions arise:

- Is this an honour or a burden?
- Can I back out if the tasks prove too difficult?
- What are the tasks I must do?
- What time commitment can I expect?
- What risks are there in acting as an executor?
- Where can I, as an executor, get help?
- Can I be paid for acting as an executor?

In this article, you will find information about being the executor of an estate. It will help you understand if you are both capable of and willing to act in such a role. None of us should act as an executor if we feel that the role is undesirable for us. Having a reluctant or hesitant executor is often the worst scenario for an estate and its heirs.

Accept or decline, continue or renounce

Before you act, or agree to act, as an executor, you should bear in mind the following aspects.

- Availability:** As an executor, you face sudden and intense demands on your time. This is especially true at the beginning of the settlement of every estate. The tasks you must complete seem endless and they won't wait for you to create spare time in your schedule. You might ask yourself: Am I willing to give up a large portion of my available time for the next 6 months to act as an executor? Your response is a good indicator of the time you are able to give to the role of an executor.
- Complexity:** Many issues in an estate can make your role as an executor much more complex. Generally, the larger an estate, the more complex tasks you will have to complete. Much of the complexity in a large estate comes from just having more estate property to deal with. However, there are other issues common to large estates that are very complex.



These would include the following issues:

- Business succession
- Tax-planning
- Family law
- Foreign investments or property
- Intricate estate planning

While these issues most often arise in large estates, they can also occur in some more modest estates.

- C. Competency:** To act as an executor, you should have familiarity with basic financial concepts. Having some knowledge of technical areas like business, law, tax, and accounting is helpful, but not essential. Overall, you should be quick to grasp new concepts and have an ability to make sound decisions. Often, the hardest thing for you to do is to assess your own strengths and limitations in these areas of competency. But, your own honest view of your competencies can really help you assess how you would perform as an executor.
- D. Relationships:** Handling an estate is not just about getting the job done. How you get it done is important as well. Particularly in an estate, emotions are high as the heirs and others experience grief, loss, and other strong emotions. You should be up to dealing with hard issues in a way that helps to preserve harmony and good feelings among all concerned. Your qualities of impartiality, objectivity, and a good sense of fairness are invaluable in fulfilling the executor's role.

What if you have been asked to be an executor, even accepted, and then the circumstances change? Or, perhaps, you were never asked to be the executor, but now you need to make a decision whether to act? You have the choice at the beginning of an estate whether you will act as the executor or not. Be careful, though, as you must not intervene in the estate before you have made your decision. The law says that once you "intermeddle" in the estate, you have taken on the responsibility to act. And, usually this means you will act as the executor until the estate is concluded. To renounce your executorship before you act is much easier than getting a court to release you later on.

Duties and tasks of an executor and timeline

Overall, your duty as an executor is to carry out the wishes that the deceased person, the testator, has expressed in their will. In particular, the testator needs you to clear up their personal affairs and give out the estate property to their heirs. You are accountable to the heirs and other persons interested in the estate for this duty.

Within your overall duty as an executor, you have three general phases of settling an estate. These phases are set out in the table on the following page, together with some of the tasks associated with each phase. Also, an executor is expected to complete his or her administration of an estate within one year. Thus, a broad timeline as to the completion of the tasks is provided.

Executor's checklist on the following page.

Executor's checklist

Phase 1: Gather information and safeguard the estate property

Within 2 weeks

- Check for completed organ donor cards
- Notify relatives
- Look for funeral arrangements or instructions
- Locate and review will for funeral instructions / organ donation
- Arrange for care of pets
- Meet with other executors, if any
- Arrange for funeral
- Obtain proof of death certificates
- Ensure financial needs of deceased's dependants are met
- Take possession of personal items, cash, and other valuables
- Secure home and terminate lease, if applicable
- Dispose of perishable items
- Arrange for supervision of vacant home and other properties
- Engage lawyer for estate advice
- Verify that adequate insurance is in place to protect property
- Notify financial institutions where deceased held accounts
- Open an estate account to deposit income and pay expenses
- Transfer balances from other accounts to estate account
- Cancel all credit cards and return cards to issuers
- Collect mail and reroute future mail to executors
- Communicate with beneficiaries directly
- Gather contact information from all beneficiaries

Within 1 month

- Plan for ongoing, regular communications with beneficiaries
- Review all materials and records regarding deceased's affairs
- Access and list contents of safety deposit box
- Apply for and collect Canada Pension Plan death benefit
- Cancel Old Age Security
- Return Social Insurance card, passport, and driver's licence
- Cancel health care insurance and return card
- Cancel subscriptions to magazines and services
- Locate all life insurance policies; notify insurers of death
- Apply for and collect life insurance benefits
- Contact former employer and determine employment benefits
- Locate investment certificates, stocks, bonds, property deeds, etc.
- Investigate all debts owed by the deceased
- Pay all legitimate debts and obtain records of payment
- Identify, value, and record estate assets as at the date of death
- Determine if there are any family law issues
- Determine if there are any dependant relief issues
- Determine if probate of the will is required
- Review business affairs of the deceased
- Arrange for valuations of estate property
- Set beneficiaries' expectations regarding distribution of the estate

Phase 2: Administer the estate

Within 3 months

- Apply for probate, if required
- Pay probate taxes to the provincial government
- Make notarial copies of grant of probate for transfer agents
- Review investments and make changes where needed
- Sell assets to meet cash requirements of the estate
- Establish any trust stipulated in the will
- Obtain a copy of previous tax returns of deceased
- File any outstanding returns from previous years
- Wind up or continue deceased's businesses
- Advertise for creditors
- Provide an update to all beneficiaries of executor's activities

Within 6 months

- File the deceased's terminal tax return
- File any necessary foreign tax returns
- Pay all income taxes owing
- Consider an interim distribution of estate to beneficiaries
- Advise beneficiaries on progress of estate and decisions made

Within 9 months

- File tax return for the estate
- Obtain clearance certificates
- Ask beneficiaries to consult advisors regarding their gifts
- Respond to beneficiaries' inquiries regarding estate distribution

Phase 3: Distribute the estate

Within 1 year

- Initiate sale of assets and transfers of title
- Distribute specific bequests and legacies to beneficiaries
- Arrange for final distribution of estate property
- Obtain receipts from beneficiaries
- Reconcile your expenses and fees as an executor
- Prepare an accounting of your administration of the estate
- Obtain beneficiary consent and release
- Apply to Court to approve administration of estate
- Pay final expenses and distributions
- Close estate account
- Communicate with beneficiaries as to final closing of estate

Each estate will unfold in its own unique time and way. The sequences of the tasks are not critical, nor are all tasks needed in every estate. Also, the size and the nature of the estate may require the executor to complete additional tasks.

Duty of care

In acting as an executor, your conduct must meet a certain standard. In legal terms, you have a duty of care in how you handle an estate. You owe this duty of care to all persons interested in the estate. If you do not meet this standard, you are personally liable for the losses that occur in the estate because of your failure.

The best advice is for you to take care of the estate property as if it were your own. Also, you must act honestly, prudently, and to the best of your ability. If you do, you likely are not responsible for things that go wrong in the estate. Here are some tips on things you should pay particular attention to in handling an estate.

- A. Do not deal with estate property in any way that personally benefits you. Even further, do not deal with estate property in any way that even appears to personally benefit you.

- B. Keep a record of the careful thought you have put in to making any decisions. You may even want to keep a journal of your activities as an executor.
- C. Invest estate property, as needed, in safe investments. However, this does not mean that you should invest only in fixed income products.
- D. Do not choose a side in any discord that occurs among the beneficiaries. Help them look to objective standards to resolve their issues. As best as you can, continue on with your prudent handling of the estate.
- E. Above all, sincerely listen to the concerns of the beneficiaries.

Professional help

You can get help as an executor in handling an estate. Many professionals, such as accountants, lawyers, and trust officers, are experts in the more technical and complex areas of estates. Their reasonable fees are an expense to the estate and not to you personally.

You can also get help in handling parts of the estate you just do not want to complete. However, you must be careful not to hand over your control of the estate as the law does not permit this type of delegation. Further, your compensation as an executor may decrease if you have others carry out your work.

A good idea is to have the testator give you, in his or her will, the power to hire agents. The will should also go on to say that the reasonable fees of the agents are paid by the estate.

Executor compensation

By law, every executor is entitled to receive reasonable compensation for their work on an estate. The following factors help determine the reasonableness of the compensation:

- Size of the estate
- Care and responsibility involved to handle estate
- Time required in performing the duties of an executor
- Skill and ability shown by the executor
- Success of work performed

In real terms, reasonable compensation for an executor falls within the range of 1½% to 5% of the gross value of the estate. Also, an executor can recover from the estate any expenses they've incurred in carrying out their duties.

It is always a good idea to discuss your compensation with the testator. If you are a friend or family member of the testator, they may expect you to act as an executor for free. Increasingly, though, friends and family members are not acting as executors without some compensation. Whatever the agreement or expectation is regarding compensation, the best practice is to have it set out in the will.

Much of the article has set out the challenges of acting as an executor. As well, it has made many suggestions that, if followed, will ease the tasks of an executor. Remember, despite the challenges of being an executor, many people have acted in this role and received some real satisfaction from a job well done. You may well experience the same result if you decide to act as an executor.

Tax & Estate Planning

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