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How to Perform the Duties of Executor of an Estate

If you have been named executor in a will, you have quite a bit of work ahead of you. Here is how probate works, plus tips to get the job done right.



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Administering to a deceased person's estate requires a lot of thankless work. Most people only act as an executor once or twice in their life — you might only probate your surviving parent's will and possibly your spouse's will, if you survive him/her — so it's not a process you do often enough to practice at it.

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You must be a quick learner, wisely manage your time and maintain your wits during these four (stressful) stages of probate:

Stage 1: Protecting Estate Property and Finding the Will

For executors, there's a lot to accomplish right off the bat.

1. Find the original will.
2. Cancel the decedent's credit cards.
3. Safeguard valuables, perhaps change door locks.
4. Collect current mail, forward future mail.
5. Get access to the decedent's homestead.
6. Gather prescription drugs for proper disposal.
7. Procure several death certificates.

You need the original will to begin probate, so find that will! Some clients keep their will in a safe deposit box (which requires a court order to open) while others leave it with their attorney. The will may also be in a place as obvious as the person's desk or file cabinet in their home.

There may be trouble accessing a decedent's residence. You are usually required to have a marshal accompany you, though some landlords look the other way and give you carte blanche access. While you're there, safeguard the decedent's property from both thieves and family members. A person's death sometimes triggers a "rush to the family safe," so plan on getting there first and removing all valuable objects. Inventory them and keep them in a separate location.

Original death certificates are the cornerstone of collecting estate assets: Financial organizations only distribute an individual's accounts to another person when they have proof the account's owner is deceased. Certificates are best ordered once the funeral home begins printing them; after six months you must contact the state's Department of Health, which only produces them for certain people. Death certificates never expire, and they are inexpensive to purchase, so order more than you think you will need. I recommend 10 at a minimum.

Stage 2: Hiring Legal Representation and Submitting the Will to the Court

The second stage of the process gets the ball rolling on the legal nitty gritty.

1. Choose knowledgeable legal representation.
2. Track out-of-pocket expenses.
3. Find the necessary people.
4. Procure signatures for legal documents.

If you work with an attorney unfamiliar with probating wills, you may wait years to distribute estate assets to beneficiaries, spend more money than you anticipated, and have to answer to beneficiaries' frustrations. Saying "It's the lawyer's fault" won't absolve you if you picked the lawyer. Ask relevant questions of any attorney you interview, the most important one being whether he/she specializes in probate matters.

Estates pay their own expenses, but having a will admitted to probate requires a filing fee and nominal legal expenses; this almost guarantees an executor (or some other party) shall have to extend some initial expenses out of pocket. Any money you spend to initiate probate is compensable, so track your expenses and keep receipts.

Your lawyer shall want the will sent to all necessary family members; tell these family members they need to return court paperwork back to the attorney (often signed and notarize), and remind them probate can take many months, sometimes even years, so they should not plan on spending their bequest before they receive it.

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Stage 3: Administering to the Estate

So, the court has finally recognized you as executor, and has given you legal documents known as "letters testamentary," which allow you to access all estate property. Congratulations! Now comes the hard work.

1. Accumulate information.
2. Collect estate assets.

3. Liquidate and sell property.
4. Pay creditors and taxes.

An executor “steps into the decedent’s shoes,” meaning you can do every legal act the deceased individual could, from requesting medical records to selling property and bringing lawsuits. You may have to do all of these tasks and more.

Every estate’s issues are different. Some estates have exotic assets, some accounts may be hard to find, some property may be owned in physical format, such as stock certificates or EE bonds, some have homes that may require ongoing maintenance. You should ask the decedent’s accountant or the IRS for old tax returns to see if there are any accounts you are not aware of. You must do everything from listing real estate for sale, to going to the closing; you have to clean out the closets, distribute personal property, and throw out the trash (or hire someone to do it, and pay them out of the proceeds of the estate). You need to hire a good accountant and file the estate’s income taxes.

Don’t forget to pay every creditor: An executor is personally liable for intentional and negligent actions, so a creditor may be able to sue you personally if you intentionally avoid paying them a legitimate debt.

Stage 4: Paying Beneficiaries and Yourself, Then Closing the Estate

Now you’re in the home stretch. There are just four more tasks you must complete.

1. Create a final accounting of the estate’s assets and expenses.
2. Send the accounting and releases to the beneficiaries.
3. Pay yourself an executor commission.
4. Send a final inventory to the court.

Once you have collected all assets, paid all taxes and creditors, and wrapped up all remaining estate affairs, you must account for all estate expenses you have paid and send them to the beneficiaries with a release for them to sign. The release effectively says that the beneficiaries agree you did your job correctly without absconding with estate assets, and they are ready to receive their bequests.

Once all releases are received, you pay bequests to the beneficiaries, pay yourself an executor commission, and file a final inventory with the court. Some states have additional requirements, but usually your executorial functions are done at this point. And FYI, as far as the executor commission goes, the amount you’d receive may be stated in the will, but if the will is silent, each state has a default fee schedule (usually a percentage of the estate) used to determine how much the executor is owed.

Remember that probate is tough stuff! You are (1) working with various government agencies, (2) communicating with multiple financial companies, (3) attempting to get access over another person’s property, and (4) having to deal with numerous beneficiaries who are (sometimes desperately) waiting to get their money. There may be disputes between family members or creditors, occasionally mistakes have been made, and sometimes property and information are hard to identify.

Nothing about probate is easy. Be patient, and do not hesitate to tell estate beneficiaries to be patient, too. The good news is that no one can force you to serve as an executor, so you don’t have to put yourself through any of these issues if you don’t want to. But remember that if you don’t do it someone else will have to, and they may not do any better of a job than you would have. And once you choose to act as an executor you are almost always required to finish the job, even if it turns out to be more than you signed up for.

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Daniel A. Timins is an estate planning and elder law attorney and a certified financial planner, helping clients with wills, probate, living needs and Medicaid planning.

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