

Executors 101 – What to Do if a Will Names YOU

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Section 1.01 Executors 101 – What to Do if a Will Names YOU

“Executor.” Often associated with death, court appearances, and unsolicited duties, you certainly would not be alone if simply reading that word caused you to shudder or cringe. To be fair, being named an executor under someone’s Last Will carries with it certain duties and responsibilities that can often seem intimidating or burdensome. However, it is important to recognize that being named an executor is not some impossible task, and in many cases, it represents a great honor – the decedent trusted you enough to nominate you to handle his or her affairs after death. With appropriate knowledge of the expectations, as well as available resources, almost anyone can successfully undertake the role of executor.

Generally, an executor is in charge of overseeing the administration of a deceased person’s estate. To assume the title of “executor,” that individual must be appointed under a decedent’s Last Will (“administrators” serve the same role in intestate estates or where an executor resigns or is unable to serve in that capacity), and that appointment must be confirmed by the probate court. The primary duties of an executor are as follows:

1. Present the Last Will to the probate court. An estate is “opened,” the executor formally appointed after the Last Will is filed with the probate court, and the executor has sworn an oath to undertake the administration of the estate. “Letters Testamentary” are issued by the probate court to evidence this appointment.
2. Notify all interested parties. Parties to receive notice usually include beneficiaries under the Last Will, the intestate heirs not included as beneficiaries under the Last Will, the Bureau of TennCare if the decedent was over age 55 (regardless of whether the decedent was a TennCare recipient), and creditors.
3. Pay debts and expenses. Tennessee law includes a “claims period” during which the decedent’s creditors can submit claims to the court to request payment out of the decedent’s assets. There is also a procedure by which an executor can challenge the validity of any claims.
4. Pay taxes. Two inevitabilities? Death and taxes. Even after a decedent passes away, the executor is responsible for filing income tax returns for the decedent and for the estate. Filing an estate tax return may also be necessary depending on the size of the estate and the need to transfer the decedent’s unused estate tax exemption to the surviving spouse.

5. Marshal and manage assets. Executors have a duty to collect all of a decedent's assets subject to estate administration (financial accounts, personal property, and in some cases, real property). Executors also have a duty to ensure that estate assets are not wasted or spoiled during the period of administration.
6. Follow the Last Will's instructions. After the estate's assets are collected, valid debts and administration expenses paid, the executor is tasked with distributing the remaining assets to the named beneficiaries. Distributions are made based on the terms of the Last Will, not the executor's personal preferences.

Note, however, the duties listed above are overly simplistic. While estate administration is usually straightforward, it can also become very complex or even contentious if all of the rules are not followed. Accordingly, while someone is serving as executor, his or her attorney should serve as the point person and resource guide during the estate administration process. Indeed, this guidance is one of the many reasons that executors are required to be represented by an attorney to open an estate. Since an executor is required to have an attorney, it makes little sense not to take advantage of this available knowledge and guidance.

It is also important that great care be taken in selecting the executor(s) that will be tasked with administering the estate. While almost everyone is capable of administering an estate, the process becomes much easier when the right person is selected for the job. In choosing an executor, here are some criteria to consider:

1. Is this person detail-oriented? A go-getter? An excellent communicator?
2. Is this person willing to ask his or her attorney for help or guidance if needed?
3. Does this person have personal knowledge of the nature and location of the assets?
4. Can this person be trusted to carry out the instructions set forth in the Last Will?
5. Can this person be trusted to act fairly and in the best interests of the estate and all of its beneficiaries?

If the person selected to serve as executor satisfies each of these criteria, then the estate is in good hands. While family members or close friends are frequently appointed to serve as executors, it is also worth noting that anyone can be appointed, including a personal attorney, or a disinterested third party (including a bank or trust officer). Often times this can represent the most efficient way to administer an estate, especially when the beneficiaries under the Last Will might not get along. Serving as an executor represents an important task with extra responsibilities, but the job is not insurmountable.

If you have been appointed to serve as an executor and desire some help in navigating the estate administration process, the estate team at Chambliss has extensive knowledge and experience in guiding executors. Similarly, if you need help creating an estate plan and selecting an executor, we are willing and able to help.