

Selecting an Executor for Your Estate

Choosing an executor is one of the most important decisions an individual makes when creating a will. Acting as executor is a difficult job. It requires working with many types of professionals such as an attorney, an accountant, an investment advisor and others with specific expertise, depending on the types of assets in the estate. This *Trust Topics* outlines the executor's role and explains how to choose an executor.

EXECUTOR'S ROLE

An executor may either be an individual or a financial institution, such as a bank or trust company. Alternatively, a bank or trust company may serve as co-executor with an individual such as the decedent's spouse, child or another person.

When settling an estate, an executor performs four basic functions:

- Locates, collects and has responsibility for the estate's assets until they are distributed to the beneficiaries
- Pays the decedent's funeral expenses, debts and estate administration expenses
- Handles tax matters
 - Pays the decedent's final income taxes
 - Pays the estate's income and estate taxes
 - Coordinates tax planning for the estate
 - Files the required income and estate tax returns
- Distributes the remaining assets in accordance with the terms of the will

CONSIDERATIONS

Factors to be considered when choosing an executor include integrity, knowledge, experience, impartiality, availability and financial responsibility.

Integrity

When selecting an executor, a primary consideration should be the integrity of the individual or financial institution. Honesty and the ability to act impartially toward all beneficiaries are essential qualities for an executor.

Knowledge

One of the initial tasks performed by an executor is locating, collecting, and if necessary, taking physical possession of assets owned by the decedent. An executor must also protect, insure and appraise the assets. When necessary, the executor must raise the cash required to pay debts, taxes and administration expenses.

To carry out these financial responsibilities, an executor must first make an investment analysis of all assets in the estate and determine which to retain and which to sell, and how the estate's cash needs will be met. A reputable

bank or trust company has an experienced staff with the knowledge needed to perform these tasks in a timely and competent manner. Usually, this staff of professionals will include an investment advisor who can make recommendations concerning the sale, retention or reinvestment of the assets.

Experience

Much of the administrative work in handling an estate is tedious record-keeping, which requires close attention to detail. An executor prepares and files the decedent's final federal and state personal income tax returns. The executor must also prepare and file income tax returns for prior years and when appropriate, gift tax returns, if those returns were not filed.

For estates of decedents with assets exceeding \$2,000,000 in 2007 and 2008, an executor is responsible for filing a federal estate tax return and, depending upon the jurisdiction, a state estate or inheritance tax return. The federal estate tax return is a complex return, due nine months after the date of death. Since the estate is a separate taxpayer, an executor is also required

to prepare and file annual income tax returns for the estate. A knowledgeable executor will propose a comprehensive tax plan to minimize the income taxes paid by the estate and its beneficiaries.

Impartiality

Depending on the nature and value of the assets, their form of ownership and the relevant provisions of the will or trust agreement, the executor may be faced with a multitude of decisions, referred to as "elections," on the federal estate tax return. The exercise or non-exercise of these elections determines the amount of taxes paid, the source of payment of those taxes and the amount of taxes deferred until the death of another individual or other specified event.

Naming a family member or friend as executor could place that individual in an uncomfortable position, and could even cause a conflict of interest, particularly when the executor is also a beneficiary of the estate. Certain decisions the executor must make, such as tax elections, have a direct financial impact on each beneficiary. Therefore,

a family member or friend must be able to make these decisions impartially. In addition to having the education and training to make these decisions, an executor must have the objectivity to handle such issues without favoring one beneficiary over another.

Availability

Because settling an estate can take more than 24 months, an executor must be willing and able to commit time and energy to the task. Delays can arise when, for example, a valuation issue on the federal estate tax return prompts an audit by the Internal Revenue Service. The audit process can easily extend the settlement of the estate for an additional 6 to 12 months.

Should problems arise, a bank or trust company's experienced staff is available to: (i) resolve issues concerning an audit; (ii) handle the day-to-day tasks during the course of the estate's administration; and (iii) provide continuity during the entire settlement period. An individual executor may not be available to perform these tasks due to personal or business commitments, illness or death.

If trusts are created under a will or trust agreement, availability is also an important factor to consider when selecting a trustee. With today's sophisticated estate planning techniques, coupled with the tax benefits derived through the use of trusts, the appointment of a bank or trust company as a trustee or co-trustee provides the added benefit of continuity for an individual's estate plan.

The information gathered and the relationships developed during the estate settlement process can be carried over to the administration of the trust. Since a typical estate plan may provide for the creation of a trust or trusts which can last for 60 or 70 years, an established bank or trust company can provide uninterrupted services to a family for several generations.

Financial Responsibility

Another major consideration is the accountability and financial responsibility of the individual or entity selected to be the executor. The settlement of an estate is a full-time job for the estate administration department in a bank or trust company. By comparison, it is usually a one-time, part-time job

for an individual. A bank or trust company is regulated by state and federal laws. It is also subject to both internal and external audits. An individual is not subject to these regulations and audit procedures.

What occurs if the executor makes or fails to make a decision that results in a substantial loss to the value of the estate's assets? For example, the executor may make the wrong decision concerning one or more of the many tax elections that may arise during the estate's administration. An individual may not have the same financial resources to cover the resulting loss that a bank or trust company would have.

CONCLUSION

The selection of an executor should not be made solely on the basis of a family relationship or years of friendship. The factors discussed above may be helpful to consider when selecting an executor for your estate.

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