

BEING AN EXECUTOR

What to Consider Before Saying Yes

It's an honor to be asked to serve as executor of an estate. But it's not necessarily in your best interests—or the best interests of the other person—to automatically agree to do so. Here are some key considerations to think about.

BEING AN EXECUTOR:

What To Consider Before Saying Yes

Key Takeaways:

- Distributing assets and paying taxes and debts are typically just a few of the duties executors are responsible for.
- Executors also face potential risks—legal and otherwise.
- Weigh the pros and cons of serving as executor to help you make a more clear-headed decision.

At some point, you may be asked to serve as the executor of someone's estate—likely a family member or maybe a close friend. If so, congratulations: That person clearly thinks highly of you and your ability to honestly oversee and coordinate one of life's key moments.

However, you might not want to say yes immediately. Being an executor is a task that comes with some serious responsibilities—the job involves a lot more than distributing money and property to the deceased's heirs. Additionally, you could face some risks if you mismanage your duties.

A better idea, in our opinion: Learn what the job likely entails so you can make a clear-headed decision about whether to accept the role.



MULTIPLE RESPONSIBILITIES

The list of duties you'll be responsible for as an executor can vary, sometimes significantly, on a state-by-state basis. In general, however, there are numerous important action steps that most executors are expected to implement or help move forward. Some of the more common ones are:

01. FIND AND FILE THE WILL.

When you file to the probate court, you are asking the court to confirm you as the personal representative of the estate. If you're confirmed, the judge will grant you authorization to act on behalf of the estate through certain documents. You'll provide these documents to financial firms, insurance companies and other institutions you deal with during the process.

02. SET UP AN ESTATE BANK ACCOUNT.

Expenses of the deceased should be paid using money from that person's estate. You will set up an estate bank account, to which the deceased's bank accounts and other cash assets will be transferred. This account is also where money paid to settle outstanding debts owed to the deceased will go.

03. IDENTIFY THE ASSETS AND LIABILITIES.

One of your biggest roles is to identify and find all the assets of the deceased person. This can literally be a hunt that requires digging through old papers, storage bins, safe deposit boxes and so on—sometimes in multiple locations. You might also need to interview family members to learn about various assets and accounts that exist. The fact is, not all assets are always described in a will. This part of the process might also involve getting physical items (jewelry, artwork) from family members or others who are currently in possession of them. One of the best ways to identify assets and liabilities as an executor is to have the deceased person's mail forwarded to you. That way, you'll receive documents such as statements for investment accounts, bank accounts and the like. Also reach out to the person's financial advisor, CPA and attorney (if relevant) to gather this information.

Note: Some assets require probate, while other assets are nonprobate. Probate assets are any assets

that pass by the person's will. Nonprobate assets are directly transferred to heirs, circumventing the need to go through the court process. Examples of nonprobate assets include:

- Joint and survivorship property
- Life insurance benefits
- Qualified retirement benefits and individual retirement accounts
- Revocable and irrevocable trusts

A key part of your job here is to protect and maintain the property. That might mean securing valuable art, ensuring that insurance policies don't lapse or selling highly volatile equity positions.

You'll also search for creditors to which the deceased owes money, as those bills will be paid from the estate and must be paid before any assets pass to the heirs.

04. MAKE NOTIFICATIONS ABOUT THE DEATH.

You'll need to let the beneficiaries named in the will and other potential heirs know about the death (as set out by state law). Inform the creditors, too. You also may need to place an ad in a newspaper to inform unknown potential heirs and creditors about the existence of the estate. (This varies by state.)

05. DEAL WITH ACTIVE ACCOUNTS AND BENEFITS.

Contact the deceased's cable company, credit card providers, subscription services and other providers and close/cancel the accounts. If the deceased was receiving Social Security benefits, you'll want to alert the Social Security Administration. And if the deceased was receiving defined benefit pension payments, the checks will need to go to the designated beneficiary (or will need to cease, depending on the benefit elected).

06. PAY DEBTS.

You'll pay the deceased's debts from the estate's funds—you're not personally liable. And once notified, creditors can make claims to the estate to get paid. As the executor, you determine the validity of those claims—paying the legitimate ones, and declining those that appear to be illegitimate. (If you reject a claim, be aware that you may end up in a court battle.)

Other expenses to be paid might include funeral costs, probate and administrative fees, and property taxes.

07. HANDLE THE TAXES.

You're also responsible for having the assets valued for tax purposes, to determine whether estate taxes are owed. You'll prepare and file a federal and/or state estate tax return, and perhaps an estate income tax return, as well as a personal income tax return covering the final year of the deceased's life. Note: Executors commonly work with attorneys, who help prepare and file probate documents as well as tax returns.

08. DISTRIBUTE BEQUESTS TO THE BENEFICIARIES.

This task comes after the bills and creditors have been paid, and after the beneficiaries sign a release saying that you've done your job as executor satisfactorily. At that point, you will see that the beneficiaries get what they're supposed to according to the will. It's possible that you'll be involved in helping fund trusts that are required by the will.

The upshot: The process is time-consuming and could take up a significant chunk of your life (depending on the complexity of the estate).

For your efforts, you are (in most cases) entitled to receive a fee. The amount depends on a range of factors—including, but not limited to, instructions in the will and the state in which the person died. (You can also choose not to be paid.)



BE AWARE OF POTENTIAL RISKS:

Legal and otherwise

Another important consideration: Being an executor can expose you to lawsuits and put you into the middle of family fights.

For example, if you are the executor of an estate—or if you're thinking about making a family member the executor of your estate—be aware that there are many legal and fiduciary responsibilities that go with the position. A complication can be as commonplace as accurately filling out the appropriate forms. Estate administration requires familiarity with the process, applicable statutes and tax forms. Even if you're extremely financially savvy, you may not be at all familiar with the elements of what it takes to be an effective executor.

Some of the key risks or hurdles you could encounter include:

| PERSONAL LIABILITY EXPOSURE

You must pay creditors and any tax bills before distributing inheritances to heirs or other beneficiaries. Flip the order, and you can be held personally liable for payments owed. So be crystal clear with beneficiaries about the steps you must take before they get their assets. And generally, all beneficiaries should receive distributions at the same time in a pro rata fashion.

Family members named as executors, for example, may not have the knowledge to ensure the process goes smoothly. The consequences can include exposing the estate to litigation as well as increasing the estate's tax liability.

Executors need to protect the value of the estate, as well as themselves, legally. An executor has to, for instance, ensure the financial health of the estate. Say a stock portfolio, houses and artwork are part of the estate. It is important to protect the value of these assets before they are transferred to heirs. Failing to do so adequately can lead to the executor breaching their fiduciary responsibilities—and potentially create personal liability exposure.

| TIME COMMITMENTS AND CONSTRAINTS

Depending on the estate, the condition of the paperwork and how close you are geographically to the deceased, you may end up spending an onerous amount of time and effort tracking down documents, closing accounts, claiming benefits, dealing with tax forms and the like. Keep in mind that you may also

need to meet strict deadlines on certain tasks, such as filing tax returns and filing the will. A survey by EstateExec, an online tool for executors, found that the typical estate takes about 16 months to settle and requires 570 hours of effort. Estates worth \$5 million or more typically take 42 months to settle and 1,167 hours to complete. You won't be involved in all of that work, of course, but you are expected to coordinate the efforts of the experts involved.

ANGRY HEIRS

As executor, you'll need to secure the estate's assets. That could mean, for example, that someone in the family will need to wait to get their hands on money or other items they want—which, in turn, can create tension between you and that person. A good approach is to gather up and safeguard the deceased's assets as quickly as possible and explain to heirs that legally you need to protect these assets for the time being. What's more, if someone removes items from their parent's home that are bequeathed to another person, the heir whose items were taken could potentially sue you.

One of the most effective ways to mitigate risks and confrontations is to keep extremely accurate records of the actions you take as executor. A detailed, itemized list of expenses you incurred in your role and the distributions you made during the process will help you demonstrate that you handled your duties accurately and responsibly. This not only helps you stay within the law, but also can help you avoid being questioned by heirs and other beneficiaries about what you've done. You might even consider taking detailed notes of all conversations with lawyers, bankers, customer service agents and so on—in case you are confronted about any of your interactions.

TAKE YOUR TIME

Asking to take some time to consider someone's request to be an executor may create some discomfort initially—particularly if it's a family member or close friend who is asking. They might wonder how you could possibly consider refusing to be involved. However, you'll likely all be better off down the line if you take time to weigh the pros and cons and make the right decision for you.

The upshot: Think carefully about what it takes to be an effective executor—and whether you possess the time, knowledge and temperament to do the job—before simply agreeing to take on this important role.





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VFO Inner Circle Special Report

By John J. Bowen Jr.

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