Choosing Your Executor
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Sooner or later, you will need to name your own executor or act as one for your relatives. Your family's wealth or your own inheritance depends on making the right choices. The executor is the estate's legal representative. This person pays bills, taxes and divides up the assets.

Bad executors can steal your inheritance or your family's wealth. Here's a story about the problem executors can create. As executor, Jack was to sell his father's Ottawa home and share the estate with his sister, Sandra, in Vancouver. Fifteen months after his father's death, the son was still living in dad's house. Sandra was uneasy because of Jack's substance abuse and his stalling. She scolded him, "You should be paying rent or house expenses until the house sells."

Jack refused and took another year before he filed his father's tax returns. Finally, he gave Sandra half of the house sale proceeds. When she asked for an accounting and her share of other assets, Jack refused to return her calls. Sandra hired her own lawyer who told her to take her brother to court, but she was too bitter. "I wish Dad made me his executor. I would have done the right thing."

Name the right executor

1. Family comes first

Unless you have good reason not to choose family members, they are your best bet. Usually they are beneficiaries and are therefore motivated to work quickly without a fee. By law, executors are entitled to claim compensation for their time and trouble. They can receive upwards of five per cent of your estate, depending on local custom.

What if you name all your children as executors and a stalemate arises? Use a tiebreaker clause so decisions do not have to be unanimous. Otherwise, executors may be forced to hire separate lawyers and end up in court. If you anticipate family feuds, consider using non-family executors.

2. Assess your particular needs

Do you operate a business, have substantial investments or rental properties? If you answered yes, you need executors with particular skills. Your brother or sister may not be able to run a dry- cleaning business until a buyer is found. If your estate has specific needs, these will affect your choice.

3. Consider your long- and short-term goals

Most estate work is wrapped up within the year usually allowed for executor's work. In some cases, this is only the beginning of an executor's role. You may need to manage estate money for 10 years until the twins are 18. If your child is disabled, you may need to protect his inheritance on a long-term basis. In such cases, consider multiple executors or hire a trust company.

4. Avoid conflicts of interest

Do not try to patch up family riffs by forcing relatives to work together as executors. It seldom solves anything, and battles may begin at the funeral home. Are you better served with an outsider such as your stockbroker or business partner? Not if they have a financial interest or connection to your assets. They could make claims against your estate and then be in conflict. In such cases, they may not be able to act as executor.

5. Specify executors' rights

Executors must put an estate's interests ahead of their own as the law considers them in a position of trust. What does that mean if your nephew, Thomas, wants to buy your summer home from your estate? If he is your executor, he can fall into a conflict when trying to buy estate assets, such as your cottage. Unless you specifically give him this right in your will, he may need court approval. He may be forced to resign if conflicts arise.

6. Name a back-up executor

What happens if your executor refuses or is not able to act due to age or illness? Executors can renounce before they act or resign later if it is too much to handle. They can renounce by signing a court form provided no work has begun on the estate. Once they start handling estate assets, however, they will need the beneficiaries' consent. The executors could be responsible for legal costs required for court approval to permit them to resign.

You can save money by adding a back-up executor when you first prepare your will. Many people who make homemade wills often fail to name one.

7. Ask for their consent in advance

Executors do not need to sign anything to confirm they will handle the job. They need not be beneficiaries or witnesses to the will either. Before you invest in having a lawyer prepare your will, get your executors' verbal consent. Otherwise, you have to pay later to change your will and replace them. Professional executors such as trust companies will normally consent in writing to confirm their fee arrangement.

8. Review your choices regularly

If your sister Sarah has moved to Calgary, can she handle your rental properties in Montreal? Will she need to hire local agents? Do you only speak to your husband's family when they ask for money? Perhaps you should reconsider them as a choice. When Mary named her father as executor, he was 67 and active until his stroke. She should replace him as a named executor by amending her will with a codicil.

9. Professionals are available to help

Your business plan must include having experienced executors to sell it as a desirable, going concern. Using a professional executor can be beneficial when family or partners have a conflict or are unqualified. Consider a professional executor such as a trust company, lawyer or accountant for short-term purposes to keep the business viable until it is sold.

The risks involved in some estates may make individual executors nervous especially if business, environmental and liability issues exist. If no one else is available, use a trust company or professional adviser. Professionals must have the time, inclination and not delegate work to others. As an alternative, it may be cheaper to hire experts on a fee-forservice basis.

10. Name only those you trust

Executors don't usually come with experience. They must, however, be trustworthy and able to balance a cheque book. Should you consider your niece Sherri because she is graduating with an MBA? She may have more skills than you need. What's more important is if she is reliable and lives close enough to help.

11. It's okay to multi-task

You can give one person more than one role in your estate planning. My wife is my estate trustee and beneficiary. The person you name as your proxy, agent or attorney for property has the same qualities you want in an executor. Your lawyer can explain how you can put in a system of checks and balances to minimize possible abuse by someone expected to protect your estate.

12. Protect your executor from lawsuits

What if the market crashes, an accident destroys a valuable asset or a business loses money? Executors can be blamed or sued for the losses. Make sure your will covers these contingencies for executors who act reasonably. An experienced estate lawyer can include clauses in your will to protect executors. Otherwise, they may renounce their position and refuse to act.

Leave an estate guidebook

Your executor needs information on where to find your will, any special instructions and your estate inventory. You cannot imagine how much time can be lost looking for financial information or worrying about funeral arrangements. Putting your affairs in order gives executors a road map to move ahead.

Executor's To-Do List

If executors breach their duties or fail to protect the estate, they can be sued. If you are acting as an executor, check with a lawyer to ensure you are properly authorized under the will to avoid any liability.

An executor's responsibilities include:

1. Find original will and any codicils amending it.

2. Confirm with your lawyer that the will is valid.

3. Secure valuables, appraise and preserve the business (if any) and protect the house by changing the locks.

4. Arrange funeral and notify next of kin.

5. Protect all property and notify the insurance company to insure theft and fire coverage.

6. Hire a lawyer to obtain probate if necessary.

7. Prepare inventory and appraisals of deceased’s assets.

8. Identify debts and cancel credit if appropriate.

9. Get investment, legal, business or tax advice.

10. Pay all bills, taxes and creditors.

11. Sell or distribute assets to beneficiaries.

12. Have beneficiaries approve and release you from any claims. Be sure to get their agreement in writing.