

BEING AN EXECUTOR

An Informational and Educational Guide for
Residents of New York State

Designed and Provided by the Rural Law Center of New York, Inc.
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Being An Executor

A GUIDE DESIGNED AND PREPARED BY THE RURAL LAW CENTER OF NEW YORK, INC.

This pamphlet is designed to give you general information about the role of an executor of a will. Each law may apply differently to your individual situation. This guide cannot replace the advice of an attorney. We suggest you consult with an attorney when executing a will.

NINETEEN IMPORTANT QUESTIONS

1. I was just asked to be executor of a will. What is an executor?

An executor is someone who makes sure that the wishes of a deceased as expressed in a will are fulfilled. The executor must find and value the assets of an estate. The executor must determine and pay the debts of the estate, such as funeral bills. The executor must distribute the remaining assets of the estate to those specified in the will.

2. Am I going to incur risks if I agree to be the executor?

You must administer the estate in an honest and good faith manner. You may be liable if you fail to do your job correctly. For example, if you distribute the proceeds before paying taxes, you may have to pay the taxes out of your own pocket. If you distribute the proceeds incorrectly, someone may bring an action against you. If the value of the estate falls because you failed to take action, you may be liable to the estate.

It is important to note that you will not be personally responsible for any debts of the deceased unless you agree to pay for them (like funeral bills).

3. What can I do before the person dies to help make my job as an executor easier?

You may want to ask to see the will before you agree to be executor. You could check to make sure that the language is clear and that the wishes will be easy to fulfill. You should check to see that you have the necessary information regarding how to find the people to whom the estate's assets are to be distributed.

You should check to see whether the will was executed correctly. To be valid, the will must have been executed in front of at least two witnesses. You should make sure the witnesses do not have any interest in the estate. If it has not already been done, you may want to ask if the witnesses would be willing to sign a self-proving affidavit stating that the execution of the will was done in the correct manner and that the testator (person writing the will) was competent.

You should check to see whether the will requires the executor to post a bond to serve or not.

You should have a copy of the will. You should know where the original will is kept. The will should be in a safe place to which you may gain easy access. The will should NOT be kept in a safe deposit box.

You should know where the person writing the will keeps important documents involving bank accounts, pension, life insurance, deeds, etc.

If you are not a family member to the writer of the will, you may want the writer of the will to complete a family tree including as many names and addresses as possible.

4. After the person dies, do I need to hire an attorney?

Administering an estate is a complicated procedure. You should consult an attorney. You should note that if you hire an attorney to represent you in executing the will, the attorney's fees and costs of the administration will normally be paid by the estate.

If you hire an attorney, the attorney's office will generally handle the entire administration of the estate. You may ask to do some of the work to reduce attorney costs. If you do not hire an attorney, you will be responsible for the entire handling of the estate.

5. After the person dies, whom do I have to notify?

After the writer of the will dies, you should notify the following:

1. Social Security Administration
2. Tax Authorities
3. Pension/Retirement
4. Bank
5. Credit Card Companies
6. Utility Companies
7. Department of Motor Vehicles

Many of these entities will require a certified copy of the death certificate.

6. How do I obtain certified copies of the death certificate?

One way to obtain certified copies of the death certificate is to contact the clerk of the town, village or city in which the writer of the will died. It will usually cost about \$15 per certificate.

7. What if I receive a pension or retirement check just after the person has died?

You or the estate may not be entitled to cash a check that is received after the person has died. To be safe, you should return each check a person receives after his/her death and explain the circumstances.

8. Do I still have to pay rent on the deceased's apartment?

If the deceased was renting an apartment on a month-to-month basis, you should give notice to the landlord immediately and arrange for the belongings to be moved at the appropriate time.

If the deceased had a lease, the deceased's estate could be held liable for all of the rent to the end of the lease time period. You should ask the landlord to agree to cancel the lease by a certain date.

9. How do I get the authority to distribute the assets of an estate?

In order to disburse the assets of the estate, you will need to obtain Letters Testamentary. Once you obtain these letters as executor, you will have exclusive and continuing power to administer the estate.

10. How do I obtain Letters Testamentary?

In order to obtain these letters, you will need to commence a special proceeding to probate the will in the Surrogate's Court in the county where the deceased lived. This is a complicated proceeding. If you need to probate a will, you should seek the advice of an attorney.

11. What is the process in Surrogate's Court?

In general terms, the steps involved in probating a will are letting interested parties know that you are asking the court to allow you to probate a specific will, that Letters Testamentary will be issued to you and how the estate has been distributed. The laws describe who needs to be notified at each step and how.

While most probate proceedings are uncontested, interested parties may object to each stage of the proceeding. For example, one may state the will is invalid. Another may state you are not eligible to serve as executor.

While you can obtain most of the forms that you will need to probate the will from your county's Surrogate's Court, the execution of a will is not easy. You will still probably need the advice of an attorney. You may obtain forms to probate a will on-line at www.courts.state.ny.us/forms3.html. While each county is obligated to accept these state approved forms, each county's Surrogate court will provide you with a free copy of its forms for each type of probate proceeding that will meet the local court's requirements.

12. What are the fees to file a probate proceeding?

The filing fee is based on the total value of the estate:

| | |
|-------------------------|---------|
| Less than \$10,000 | \$35 |
| \$10,000 to <\$20,000 | \$60 |
| \$20,000 to <\$50,000 | \$170 |
| \$50,000 to <\$100,000 | \$225 |
| \$100,000 to <\$250,000 | \$335 |
| \$250,000 to <\$500,000 | \$500 |
| more than \$500,000 | \$1,000 |

13. Am I qualified to be an executor?

Nearly anyone is qualified to serve as an executor, unless he or she is: an infant, an incompetent, a non-U.S. citizen not residing in New York, a felon, a person unable to speak or write the English language, or a person who does not possess the qualifications of a fiduciary by reason of substance abuse, dishonesty, or who is otherwise unfit.

You can be the executor even if you are the primary beneficiary of the estate.

14. What if I change my mind and want to resign as executor?

If you do not want to be an executor, you may decline to serve by filing a renunciation with the Surrogate's Court. Your renunciation must be signed in front of a notary public. Once you have accepted the responsibility of an executor, you will need court permission to terminate your role.

15. Do I have to notify creditors?

You have to make diligent efforts to determine if the deceased owed a debt to any person or corporation. You must notify them that you will be receiving Letters Testamentary. Creditors who have been notified that you are obtaining the letters have to file their claims within seven months of the issuance of the letters.

16. Do spouses have special rights?

Under New York State law, spouses are entitled to a minimum share of the estate. A spouse is entitled to receive at least \$50,000 or one-third of the net estate. If a spouse will receive less than this amount in a will, he or she can elect against the will and obtain the statutory amount.

In addition, there are several family exemptions that apply when the deceased leaves a spouse or child under the age of 21. Family exemptions include:

- household goods not exceeding \$10,000 in value
- family Bible, family pictures, video and computer tapes, software and books not exceeding \$1000 in value
- domestic animals, their food for 60 days, farm machinery, one tractor, and one lawn tractor not exceeding \$15,000 in value
- generally, one motor vehicle not exceeding \$15,000 in value
- generally, money or other personal property not exceeding \$15,000

These family exemptions are not included in the gross estate and thus will not be distributed through the will. Creditors cannot take these resources.

17. Do I have to go to court to settle property owned jointly?

If a piece of property is owned jointly (not tenants in common) by the deceased and another person, when the writer of the will dies, the other person will be the sole owner of the property. The other person should file a certified copy of the death certificate with the county clerk's office and any other needed entity.

If a bank account is owned jointly by the deceased and another person, when the writer of the will dies, the other person may remove all of the funds in the account.

If your name is on the deceased's account for convenience only to help administer his or her funds, after the writer of the will dies, you are not entitled to any of the funds.

If you are the spouse of the deceased, you are entitled to family exemptions. You may change ownership of one car worth less than \$15,000 by submitting a certified copy of the death certificate to the Department of Motor Vehicles.

18. What about taxes?

You will need to file a final income tax return for the testator by April 15th of the year after the writer of the will dies.

Depending on the amount of the estate, you may need to file state and federal estate and gift tax returns. If you need to file these returns, the deadline is 9 months after the date of the writer of the will's death.

19. What if the estate is small?

If the estate is worth less than \$20,000, you can file to be voluntary administrator through a simpler "small estate" proceeding. Property passing as a result of death and family exemptions is not included in this amount.

You cannot transfer real property through the small estate proceeding.