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When a Bad Executor Ignores Your Will

By Elaine Floyd, CFP®

An untrustworthy executor can foil even the most well-designed estate plan. Use these guidelines to select a reliable executor—one who will assure that assets pass to their rightful heirs.

Think about what will happen to your assets after you die. I'm not talking about wills, trusts, or other estate-planning tools used to specify who inherits your property. I'm talking about what physically happens to your assets when you are no longer around to oversee them. Who takes charge immediately following your death? Who oversees the investment portfolio and makes the buy/sell decisions until your assets are distributed to the heirs? Who pays the bills and files the tax returns? And perhaps most important, who's responsible for physically transferring the assets into the heirs' names as instructed by the will?

The answer to all of these questions, of course, is the executor. As the individual appointed to handle the administrative details of wrapping up an estate, the executor has enormous power over a decedent's affairs. And—since the decedent is, by definition, not around to monitor the executor's behavior—the potential for abuse or incompetence is enormous.

BAD EXECUTORS

In one case a man left his \$2 million estate in trust for his partner. But the partner, who died a year later, never received a penny from the trust. The only one who profited was the decedent's lawyer, who also happened to be the executor—and sole beneficiary—of the individual's will.

Or take the famous case of Doris Duke, who specified that her \$1.2 billion estate should go toward “the improvement of humanity” and named her alcoholic and semiliterate butler as executor. The lawyers had a “feeding frenzy” with that one, as one attorney informed the *New York Times*. “Lawyers flew across the country charging their hourly rate as they went, sometimes as high as \$450 an hour. They stayed in New York City's finest hotels,” the attorney continued. “When the State Court of Appeals issued a decision in the case, 14 lawyers from two firms spent a total of more than 40 hours reviewing it, and all submitted bills for their work.” The legal and estate administration fees added up to more than \$10 million—before Ms. Duke's chosen charities saw a single penny.

And finally, there's the New York lawyer who attempted to pilfer from an estate by inventing an heiress, then checking in at a motel—in drag—under the fictitious person's name.

Administering an estate is unquestionably time-consuming, requiring attention to detail as well as some knowledge of the probate process. For these reasons, many people designate their attorney as executor. But while most attorneys are capable of properly administering an estate, they charge substantial fees—and this does not eliminate the potential for abuse.

Assets must also be managed during the probate process. Whoever is administering the estate must be attentive to the markets and prepared to make investment decisions, in addition to handling the legal work involved. An executor who lets the decedent's portfolio drop in value due to neglect is guilty of mismanagement.

CHOOSING A GOOD EXECUTOR

One solution is to appoint one of the beneficiaries of the will as executor—the child with the best organizational capabilities, for example. A beneficiary with an interest in preserving the value of the estate is likely to do a conscientious job of managing the assets and distributing them to heirs. Of course, the power dynamics at work in selecting the child may spark some sibling rivalry. Other kids, feeling that they should have been chosen, may resent the executor, who may also find himself in the middle of family squabbles over heirlooms not included in the will. Some clients choose a professional to serve as executor for one chief reason: to preserve the family peace.

HERE ARE A FEW GENERAL SUGGESTIONS FOR CHOOSING AN EXECUTOR:

Trust should be valued over all other qualities.

Remember, you will not be around to oversee the executor's work. An executor who isn't savvy in legal and tax issues can always get help. You will fare better by selecting someone trustworthy than someone simply knowledgeable about the law. If an attorney or other professional is appointed executor, that person should not be named in the will as a beneficiary.

A person named an executor in a will does not have to serve. If he elects to decline the position, the court will appoint an alternate administrator. If you want full control over who will be handling your affairs after your death, you should discuss the responsibilities involved with the individual you plan to designate. If the intended executor decides he is unwilling to take on the job, you can find another executor yourself, rather than leaving the decision up to the court.

If you are choosing a family member who has never served as executor before, both you and the designated family member should review the duties involved. See *The Executor's Guide: Settling a Loved One's Estate or Trust* by Mary Randolph (Nolo 2021). Talking about it will help prepare the executor for the job, minimizing the chance that he or she will find it overwhelming. It also gives you the opportunity

to tell the executor how you want certain things handled.

You may wish to arrange a joint meeting with the executor and the estate-planning attorney so the attorney can provide a briefing on what the executor should do first. You should also inform the other beneficiaries of the estate plan so they can keep an eye on the executor during the administration of the estate to be certain that their interests are being served.

People go to great trouble and expense to create estate plans that benefit their relatives and friends. Choosing a reliable executor is the best way to ensure that the plan is actually carried out—the way you originally intended.

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