

The Call of Duty

AN EXECUTOR'S RESPONSIBILITIES

smart money | By Amy K. Kanyuk

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The death of a loved one brings with it responsibility to the surviving family members to sort out and finalize the decedent's affairs. If the decedent died "testate," that means the person had a valid will in place at the time of death. If he or she died "intestate," then the decedent died without a will. In either case, someone must take responsibility for winding up the decedent's affairs. That "someone"—usually called an executor or an administrator—is appointed by and must report to the probate court. If the decedent had a will, that document names the person that the decedent wanted to serve as executor. If the named person can't or won't serve, or if the decedent died intestate, someone else must ask the probate court to appoint her or him as the executor of the decedent's estate.

WHERE TO BEGIN?

The executor's role can be defined pretty simply: She must locate and preserve the decedent's assets, pay his final debts and expenses, and then distribute the remaining property to the decedent's heirs. Not surprisingly, serving as executor can be much more difficult and time consuming than this simple explanation might lead you to believe. When the estate is large or complicated, or if the heirs do not get along, being the executor can be very difficult indeed. For most people, the duties of an executor are totally unfamiliar, and they don't even know how to begin the process. In New Hampshire, an executor is not required to have an attorney, but this is not true in every state. Regardless, consulting a lawyer is probably a good place to start, no matter where the decedent lived. Even if an estate is uncomplicated and the heirs are getting along, a layperson executor might not think of or consider various issues that could have significant consequences down the road.

For example, the tax laws impose on an executor personal liability for the decedent's unpaid income and gift taxes. In other words, if you are the executor, and the decedent "forgot" to pay any of his taxes before he died, then your personal assets may be at risk to pay those taxes if you don't administer the estate correctly. No one wants the IRS to repossess their station wagon because they were trying to do a good deed and administer the estate of Uncle Kenny the Tax Evader.

Any attorney's fees incurred in administering an estate are payable out of the estate, so hiring a lawyer shouldn't cost the executor any money personally. In addition, an executor is entitled to reasonable compensation for her efforts. However, everyone's fees—both the lawyer's and the executor's—are subject to the approval of the probate court.

ONLINE RESOURCES

If you're the adventurous type and want to try to administer an estate without hiring a lawyer, the New Hampshire Bar Association has published a handbook titled *Administering an Estate* that is designed to help people carry out their duties as an executor. The handbook is available for free at www.courts.state.nh.us/probate/adminestate.pdf. There are also online tools and resources for this purpose. EstateExec.com, for example, provides tools that are intended to help simplify the estate administration process. These online resources can be helpful to establish a tracking system for a decedent's estate but do not offer other resources that can be invaluable during the estate administration process, such as legal advice or common sense. They also don't provide coverage for all possible situations (or even all of the common situations).

CALL FOR BACKUP

An online resource also won't help you manage your unruly siblings who are demanding their fair share of Mom's estate (estate administration lawyers call these the "How Much and When" phone calls and generally are better at fielding them than a family-member executor because they don't have to sit next to the siblings at holiday dinners). Most people are surprised to learn that an estate - even a pretty uncomplicated one - often takes 12 to 18 months to administer. Managing the beneficiaries' expectations regarding the amount and timing of distributions can be a big part of the executor's job.

If you're named as the executor of a decedent's estate, it's probably a good idea to pay a lawyer for an hour of his time in order to get a road map of your specific situation, and then you can decide whether you think you can handle the administration on your own or if you need additional help from an attorney. If you don't know how to find a lawyer, the best place to start is by asking for referrals from people you know or contacting the New Hampshire Bar Association's Lawyer Referral Service.

Serving as an executor can be challenging. If you accept the challenge, either as a way to do a final favor for a loved one or out of a sense of obligation, you should think of it as a professional duty. Patience, organization, and the ability to manage multiple beneficiaries with competing interests will be valuable tools in fulfilling that duty.