

# Planning Matters

## Choosing the Right Executor for your Estate

Appointing an executor for your estate shouldn't be stressful, but it does require thoughtful consideration. To begin, you should understand what the executor will be called upon to do. As you would expect, your executor's job is to see to it that the instructions outlined in your Will are carried out. To do so, he or she will be required to deal with courts, financial institutions, your beneficiaries and more, depending on the complexity of your estate. This can take from 12-18 months.

### So who makes an ideal executor?

*Someone that you trust.* Even with a detailed Will, your executor will be called upon to make decisions on your behalf.

*A person who is responsible and organized.* There is a lot of paperwork involved, and careful record keeping is vital.

*Someone who is willing.* Ask permission before you name someone. There is no point in choosing an executor if he or she is going to decline the role when the time comes. If the executor declines the role, and there is no alternate or co-executor named, the court will appoint someone, often a family member that steps forward, or failing that, a Public Trustee. In either case it may not be a choice you would have approved.

*A person who knows when and how to get advice.* It isn't necessary that your executor be a legal or financial expert, but you may want to choose someone who will get sound advice from professionals when the situation calls for expertise.

### Is it better to have an alternate or a co-executor?

It isn't a matter of one being better than another, but there is a difference. An alternate executor is precisely that, the person who fills the role if the primary executor

is unable or unwilling. If the primary executor accepts the position the alternate has no role. If you are not naming co-executors it's very important to name an alternate.

Co-executors, whether two or more, work together with equal responsibility to execute your Will. There are advantages and disadvantages to naming co-executors.

### Advantages

It is very common to name a spouse as an executor, but it can be very emotional and difficult for a spouse to deal with the role of executor while dealing with the grieving process. Naming a co-executor allows your spouse to remain in a decision making role, but also allows for active support throughout the process.

Even when there is no spouse named as executor it can be helpful to have more than one executor to share the load or to bring expertise. Co-executors may include other family members, friends, trusted colleagues, lawyers, accountants or a trust company.

### Disadvantages

Multiple executors can result in conflicts over decisions concerning your estate, which can keep your assets in limbo. It is very important that you include a method of conflict resolution in your Will.

### Place of residence of your executor

Another consideration is where the person you have named as executor lives. If the person lives in a different province from you, it can become cumbersome for them to manage the process.

Take caution if you are considering naming a person who resides outside of Canada as your executor - particularly if that person lives in the United States. Typically, non-resident or foreign executors will be required to obtain a bond in order to act as executor. This requires disclosing personal and financial information to an insurance company in order for it to assess the risk and it might be difficult to find an insurer to issue the bond. There would also be costs related to this that your estate would have to fund. More importantly, however, is the potential for foreign tax consequences if you name a non-resident as executor. We recommend obtaining professional advice prior to making this designation.

## Appointing a Trust Company as executor

Many people chose to appoint a Canadian trust company as the executor of their Estate to relieve the burden from friends and family. Canadian trust companies can be financial institutions or independent trust companies. This removes the need for multiple or alternate executor designations as survivorship issues are eliminated. Trust companies may have minimum sizes for estates, however, and can be costly.

An alternate way to have professional help assured for your executors is through Professional Executor Assistance, usually through a financial institution. Unlike a professional appointed as an executor, these

professionals work with the executor but have no decision making powers.

## Compensating your executor

When family acts as executors, they often do so without expecting a fee, but they do have the right to request one from the court if you have not stipulated compensation in your Will.

If you appoint professionals as executors you will of course have to pay for their services, and those payment agreements should be included in your Will.

## What you can do to assist your executor(s)

Whether you have one or more executors, discuss your wishes and intentions ahead of time. The more they understand about your desires the better prepared they will be to make decisions on your behalf. If you have co-executors, have a discussion all together to pave the way for a harmonious relationship.

Register your Will and make sure your executor(s) know how to access the original when the time comes.

Start your executor(s) off right by having up-to-date records of your assets and debts.

Have a discussion about your plans with your beneficiaries. Letting them know what to expect can go far in preventing conflict with executors later.

Keep your decision up-to-date. It may have been a reasonable idea to appoint your brother as executor 10 years ago, but perhaps now he lives in another city, province or country, or is not in good health, two factors that could hinder his ability to handle the job. Changing your executor(s) can be done in a separate document called a codicil and doesn't require redoing your entire Will.

It may take some reflection to choose the right person(s) for the job, but once everything is in order you'll be rewarded with great peace-of-mind.

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