Top 10 Executor Mistakes

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Executors are bound by a bewildering array of responsibilities and duties. Here are 10 common pitfalls to avoid.

Improperly interpreting, or not properly following, the terms of the Will

The Will is the governing document for an estate administration. Notwithstanding, many executors choose to view the Will as providing rough “guidelines” only. Others may proceed to administer the estate based on what they believe the testator “really wanted.” Still others administer the estate based on what they think the Will says, without a clear understanding of what terms, such as “issue per stirpes” or “in specie,” mean or what duties and powers they are authorized or obliged to exercise.

Paying the wrong amounts and/or making payments to the wrong parties

It’s pretty difficult to make an error when the Will says “pay $10,000 to my sister Elizabeth, if she survives me.” It can be more challenging to accurately make distributions when the “residue” (or net estate) is to be paid to a number of residual beneficiaries in unequal shares and/or in a combination of cash and “in kind” (or “in specie”). Failing to take into account all estate liabilities (estate taxes and other debts) and/or to identify all estate assets commonly results in both over- and underpayment to beneficiaries.

Missing or overlooking a beneficiary

This error can result from simple carelessness or a failure to properly interpret a class of beneficiaries. For example, in most jurisdictions, a gift to “children” or “issue” includes children born outside marriage. It’s not unusual for executors to fail to properly identify all members of a class.

Not prudently investing trust assets

Investing your own money is one thing; investing other people’s money is a very different thing. An executor must always act prudently and in the best interests of the beneficiaries and follow the investment powers set out in the Will and/or the governing legislation.

Failing to obey the even-hand rule

Pursuant to this rule, the executor must ensure that each beneficiary receives exactly what he’s entitled to, no more and no less. In trust administrations with different classes of beneficiary (for example, a spouse entitled to trust income; children entitled to trust capital), the rule extends to investing in a manner which is fair to both classes.

Undue delay in paying beneficiaries

All too often, executors procrastinate and fail to meet deadlines and guidelines. Tax and other estate liability payments may be subject to strict deadlines. Distributions and the general progress of an estate administration are generally governed by standard guidelines. For instance, in most jurisdictions, a beneficiary can expect to receive his or her legacy and/or a preliminary distribution of residue, no more than one year from the testator’s date of death.

Not properly protecting estate assets

One of the first duties an executor must undertake is locating and safeguarding estate assets. Failing to identify an estate asset and/ or failing to ensure proper protection (adequate insurance coverage; changing locks; securing pets and livestock; taking care of an ongoing business) can result in serious losses to an estate and claims against the negligent or careless executor.

Improperly dealing with personal effects

All too often, executors ignore what the Will says about the personal effects and proceed to distribute the assets in the way they think their mom/uncle/brother/sister would have wanted. Other common improprieties include failing to deal effectively with a collection or unusual/unique asset (artwork, wine, a firearm) and failing to proper value all personal effects.

Not communicating effectively–if at all–with beneficiaries

An executor may be doing everything well and in a timely manner, but if he fails to keep the beneficiaries apprised, he’s likely to run into problems. Estate administration can be very complex and can, legitimately, take a very long time. No news is generally interpreted as bad news and often results in annoyed and anxious beneficiaries.

Improper delegation of duties

As a general rule, executors are expected to personally discharge all duties. Hiring someone to do the work for them and/or leaving decisions to others (co-executors, investment advisors) may result in personally liability to the executor.