

Your Executor: A Trusted Employee

By Joanna J. Ringrose, LL.B., LL.M.

AYour executor is the person you name in your will who is to be responsible for administering your estate after your death. (In Ontario, an executor is also referred to as an “estate trustee with a will”.)

What is my executor expected to do?

Your executor’s duties will vary depending on the complexity of your estate, but they generally have to do with winding up your financial affairs. These duties may include:

- * Making funeral and burial arrangements
- * Protecting the estate property
- * Interpreting your will
- * Dealing with will challenges
- * Monitoring limitation periods under legislation, such as the Family Law Act
- * Probating your will (if required)
- * Collecting the assets of your estate
- * Preparing an estate inventory
- * Advertising for creditors
- * Paying claims against your estate
- * Representing your estate in claims against others
- * Preparing income tax returns
- * Obtaining income tax clearance certificate(s)
- * Establishing any trusts that were created in your will
- * Investing trust property as a “prudent investor”
- * Distributing estate property to beneficiaries
- * Preparing detailed estate accounts for beneficiaries
- * Obtaining approvals of accounts and releases from beneficiaries

While some may deem it an honour to be named an executor, clearly, there is much more to it than that. Think of your executor as an employee. You will want someone who is financially responsible, stable and trustworthy. They will generally be remunerated for the work they do.

Should I name a family member as my executor?

The person you choose to be your executor should be acquainted with you and your family circumstances. Before signing your will, speak to the person. Ensure that he or she understands the nature of the executor’s work and will be willing and able to act for you. A family member may well be a good choice.

Keep in mind, however, that when the estate is large or consists of a complex mix of assets, an executor’s work can be quite technical. No family member may have the appropriate experience. Then, it may be advisable to appoint a knowledgeable professional (e.g., a lawyer, accountant, or trust company) as executor or perhaps as a co-executor with a family member.

If there are spouses and children of previous marriages, one or more neutral executors may be required. Build in provisions allowing for decisions to be made by a majority of the executors. In the absence of such provisions in the will, the executors must be unanimous and any disagreement could result in serious problems.

What are other considerations in choosing my executor?

If there is an ongoing trust continuing over a number of years, name some one who is likely to survive to the end of the trust period. Also name an alternate, should your first choice become unwilling or unable to act. In particular, choose someone with financial experience and expertise who is aware of the obligations of an executor and who will devote the necessary time to consider the various elements of Ontario’s new “prudent investor” requirements. This may include preparing a written investment plan or strategy.

Choose an executor who lives near the estate assets. If your executor lives outside Ontario, he or she may

live outside Ontario, he or she may need to post a bond (to insure against possible misconduct.) There can also be negative tax consequences if your executor resides outside Canada.

Anticipate and avoid potential conflicts of interest, such as might arise if you name a business partner as your executor.

Remember, estate administration can be a complex, time-consuming process. The role of executor can be a heavy imposition, rather than a reward for a relative or close friend. (For example, executors are personally liable for taxes owing, if they distribute the estate before obtaining tax clearances.) When appropriate, consider appointing a professional executor. Alternatively, choose someone who knows his or her limitations and who will hire a professional to assist, particularly when complex issues arise.

This article was prepared by Joanna J. Ringrose, who has been practicing law in the area of estate planning and administration for over 20 years. For inquiries on this topic, please contact Joanna at (905) 844-5021 or at law@joannaringrose.com



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