

EXECUTOR'S GUIDE

You Have Been Named the Executor in a Will.

As long as you are willing and able to become the executor of the testator's estate in the event of the testator's death, there is nothing else required of you. The executorship does not exist until the testator dies with his or her most recent will designating you as the executor of his or her estate. If you think you will be unwilling or unable to fulfill the duties of an executor if the testator dies, tell the testator immediately so that he or she can change the executor designation in his or her will.



Executor:
The person named in the will to be responsible for handling the property of the decedent according to the will.

An Overview of the Probate Process

Upon the death of the testator, the executor locates the will and files a document commonly called a "Petition for Probate of Will and Appointment of Personal Representative" with the probate court. The court will admit the will to probate and will also require the executor to take an oath of office, after which the executor will receive official documentation, typically called "Letters of Administration" or "Letters Testamentary," showing his or her status as executor.

Some states require the executor to publish a notice in a local newspaper calling for creditors to present their claims to the executor within a specific time frame. If creditors fail to present their claims within a certain time frame, the creditors may lose their ability to collect the debt owed to them by the testator.

The executor must inventory all of the real and personal property of the estate so the value of the estate may be determined.

The inventory ensures:

1. The estate has enough value to cover debts.
2. The intended distributions to the beneficiaries are met, and
3. All property has been accounted for.

Once the creditor notice period expires and any creditor claims have been paid, and the estate fully administered, the executor will close the estate by filing the necessary documents with the probate court.

Terms to Know

Decedent: A testator who has died.

Estate: Everything owned by the decedent, including personal belongings, real estate, savings, investments, life insurance, business interests, and employee benefits.

Executor: The person named in the will to be responsible for handling and distributing the property of the decedent according to the will; also called a "personal representative" or "administrator."

Executorship: A legal relationship created when a court appoints someone executor of an estate.

Fiduciary Duty: A legal duty to act in the best interests of the beneficiary or beneficiaries.

Personal Representative: see "Executor."

Probate: The method by which the decedent's estate is administered and processed through the legal system after they have died. A state probate court oversees this process.

Testator: A person who has made a legally binding will. After the testator dies, he or she is commonly referred to as the "decedent" or "deceased."

Will: A legal document that provides specific instructions for how the testator's assets should be distributed, names the guardian(s) of any ward(s) of the testator, and sets forth any other final wishes of the testator.

Summary of an Executor's Duties

- Initiate probate proceedings, if necessary.
- Collect necessary documents, including certified copies of the death certificate.
- File final income tax returns for the decedent and, if necessary, file estate tax returns.
- Notify the post office, utility companies, credit card companies, banks and other businesses of the death.
- Inventory all assets and, if necessary, have valuable assets appraised.
- Collect money owed to, and pay bills owed by, the estate.
- Notify beneficiaries named in the will or people entitled to inherit under state law.
- Manage estate assets until they are turned over to the beneficiaries.
- If there's a living trust, work with the successor trustee to coordinate bill paying, property management, and other tasks.
- Acquire the beneficiaries' input and consent on important decisions such as selling assets or changing investments.
- Distribute the remaining assets.



Frequently Asked Questions

Does the executor named in a will have to serve?

No. An executor has the right to accept or decline this responsibility, and someone who agrees to act as an executor has the right to resign at any time. If the will names an alternate executor, that person will fulfill the executor's duties. If not, the court will appoint one.

Is the executor personally responsible for payment of the estate debts?

No. The executor is not responsible for paying the debts of the estate out of his or her own pocket. The executor is only responsible for paying the decedent's debts and taxes to the extent of that the estate has sufficient assets to pay them. However, if the estate's assets are distributed improperly or if the executor breaches his or her fiduciary duty, the executor can be held personally liable.

Do executors get paid?

Most executors perform their duties without payment, but executors may be entitled to payment. The amount an executor is entitled to, if he or she expects to be paid, is set by state law and/or according to what the probate court decides is reasonable under the circumstances.

What if I become the executor, but circumstances prevent me from continuing as executor?

If you haven't yet begun the probate process, you should simply notify the alternate executor named in the will. If there isn't an alternate executor, someone must take over informally and then begin probate proceedings, at which time the person acting informally as the executor can ask the court to be formally appointed as the executor.

How long does an executorship last?

The executor's duties are completed when the estate is entirely settled and all assets have been distributed. The amount of time it takes to settle the estate varies depending on the complexity of the individual situation. One year is considered a reasonable length of time to settle an estate.

Where should the executor go for help?

If there are disputes, complex property issues, significant tax liability, or other complicated scenarios, then an executor may wish to seek the advice of an attorney, an accountant, or turn to self-help books or online resources.