

Executors and trustees

The name game

Have you chosen the executor of your estate? How about the trustee for trusts you intend to establish? It's important to select someone who's capable of handling these duties on your family's behalf.

In some cases, the executor of your estate and the trustee of your trusts will be the same person. In any event, it's vital to designate a successor to both of these positions. (See "Provide a stand-in for these roles.")

Naming an executor

The executor (called a "personal representative" in some states) is the person named in a will to carry out the wishes of the deceased person. Typically, the executor shepherds the will through the probate process, takes steps to protect the assets of the estate, distributes property to beneficiaries according to the will, and pays the estate's debts and taxes.

Most assets must pass through probate before they can be distributed to beneficiaries. (Note, however, that assets transferred to a living trust are exempted from probate.) When the will is offered for probate, the executor will also obtain "letters testamentary" from the court, authorizing him or her to act on the estate's behalf.

It's the executor's responsibility to locate, manage and disburse the assets of the estate. In addition, he or she must determine the value of property, such as real estate, artwork and other collectibles. Depending on the finances, assets may have to be liquidated to pay debts of the estate.

Also, the executor can use estate funds to pay for funeral and burial expenses if no other arrangements have been made. The executor will obtain copies of the death certificate, which will be needed for several purposes, including closing financial accounts, canceling certain benefit payments and filing the final tax return.

Finally, the executor must manage the estate's assets until they can be distributed. This often involves investment accounts.

So whom should you choose as the executor of your estate? Your first inclination may be to name a family member, like an adult child or a trusted friend. But this can cause complications.

For starters, the person may be too grief-stricken to function effectively. And, if the executor stands to gain from the will, there may be conflicts of interest — real or perceived — which can trigger contests of your will or other disputes by disgruntled family members. Furthermore, the executor may lack the financial acumen needed for this position.

Frequently, a professional advisor whom you know and trust is a good alternative. If this professional is already familiar with your financial affairs, even better.

Naming the trustee

The trustee is the person who has legal responsibility for administering the trust on behalf of the interested parties. Depending on the trust terms, this authority may be broad or limited.

Generally, trustees must meet fiduciary duties to the beneficiaries of the trust. They must manage the trust prudently and treat all beneficiaries fairly and impartially. This can be more difficult than it sounds because beneficiaries may have competing interests. For example, a spouse in a second marriage may be entitled to annual income while the children of the deceased's first marriage are entitled to the remainder. The trustee must balance out their needs when making investment decisions.

In some instances, the trustee is granted the discretion to distribute or withhold the distribution of trust funds. For example, this discretionary power may be intended to protect assets from the beneficiary's creditors or safeguard funds until the beneficiary reaches a certain age. The trustee in such a discretionary trust should be sympathetic to the intent of the trust and legitimate needs of the beneficiary.

The decision about naming a trustee is similar to the dilemma of choosing an executor. The responsibilities require great attention to detail, financial acumen and dedication. Because of the heavy reliance on investment expertise, choosing a professional over a family member or friend is generally recommended. At the very least, make it clear to the trustee that he or she may — and should — rely on professionals as appropriate.

Other key considerations

An executor can renounce the right to this position by filing a written declaration with the probate court. Along the same lines, a designated trustee may decline to accept the position or subsequently resign if permission is allowed by the trust or permitted by a court. This further accentuates the need to name backups for these important positions.

If you still haven't made up your mind, discuss the issues with your estate planning team, including the attorney who drafted your will.

Sidebar: Provide a stand-in for these roles

It's not enough to designate someone as executor or trustee. It's absolutely essential to designate a "successor" (or an "alternate") in the event that your top choice is unable or unwilling to fulfill the responsibilities.

For instance, an executor may decide that he or she doesn't have the time or expertise. Or a trustee may predecease you. What happens then?

Without a named successor, the probate court will appoint one for the estate. For a trustee, the trust will often outline procedures to follow. As a last resort, a court will appoint someone else to do the job.

Practical suggestion: Choose the "next best" person to step in. Make sure that he or she is on board with your decision. Similar to the discussion about naming a power of attorney, consider whether you should name a professional as a backup.

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