

The Bridge Building PROGRAM

THE BRIDGE BUILDING SCHOOL

SELECTING AN EXECUTOR

Brad Antoniuk • Bow Wealth Management | Raymond James Ltd.

SELECTING AN EXECUTOR

DOES IT MATTER WHO YOU CHOOSE?

Executor considerations may not be top of mind for most people when they are drafting their wills and estate plans. It is understandable when many are not aware of what is expected of an executor, and even fewer have the practical experience acting in the role. Whether you are selecting an executor or have been named an executor, if you are not aware of what is required, you may be at risk of costly errors, unfulfilled intentions and avoidable liabilities. It is always recommended to get qualified legal advice for your situation.

Before selecting an executor, it is vital to understand what one does.

At a very high level, an executor is responsible for administering the entire estate of an individual.

In general terms, duties include, but are not limited to:

- Arranging the funeral.
- Obtaining all the required documents, waivers, court approval for administering the estate, including probating the will through the courts when required.
- Dealing with all the assets (tangible/digital/financial/and more), insurance, property, household and investments of the individual.
- Dealing with all the liabilities and contingent liabilities of the individual and/or estate.

- Dealing with all the income, costs and expenses related to administering the estate of the individual.
- Keeping detailed records and accounting.
- Hiring and overseeing necessary professionals and service providers. This might include appraisals, tax preparation, real estate, financial/tax/legal advice and more.
- Dealing with all the tax, legal and regulatory filings and requirements related to the income, assets, interests of the individual and/or their estate as well as the authority to administer the estate.
- Dealing with all the parties involved. This could include notification of death to providing documentation, terminating services/contracts, responding to and settling claims and fulfilling the terms and required strategies of the will.
- Dealing with the beneficiaries of the estate for communication requirements, reporting requirements and distribution of the estate.

With these responsibilities, there is potential for things to go wrong, and executors can be held personally liable.

Some executor errors:

- Keeping poor records.
- Acting without the authority of a will or the authority of the court.
- Improperly liquidating or distributing assets (especially prior to obtaining CRA clearance).

- Acting with a conflict of interest.
- Failing to advertise for/inform required parties such as creditors, CRA, beneficiaries, and others.
- Comingling estate asset/liabilities.
- Improperly protecting, managing, maintaining or transacting estate property.
- Failing to file required tax, legal or other documents.
- Failing to meet certain deadlines for required financial, legal, regulatory or tax matters.
- Failing to account to beneficiaries and obtain the required legal releases.

It is acceptable for an executor to charge for their services. A simple, well-planned estate may only take several months to administer but a typical Canadian could easily have a more complex estate requiring years of administration (yes, years). If that Canadian has not adequately prepared their executor and beneficiaries for the estate administration, it could take even longer, lead to conflict, costs and liabilities.

In selecting an executor, people have been known to choose a certain family member or friend, thinking they will create hard feelings if they don't choose a particular person. There are far more important considerations when selecting an executor:

- Is the executor in the same jurisdiction as the estate? There are added complexities with an out-of-province executor.

- Age is a factor. Is the executor likely to outlive the testator (the individual who makes the will)? Named executors can be too old or too young for the role.
- Does the executor understand and have the ability to fulfill their fiduciary duty in a trustworthy manner? Proficiency and attributes of an executor affect how they do the job.
- Is the executor experienced and knowledgeable with all the financial matters applicable to administering the estate? Is the executor prepared for the correct order of administration and distribution of the estate?
- Does the executor have the required time to administer the estate?
- Is the executor not only a good communicator but also a good record-keeper, good with details and able to manage multiple relationships with interested parties, including all the beneficiaries?
- Is the executor well-prepared by the testator to fulfill the intentions of the testator and administer the estate accordingly, in all its complexities, and has payment for services been discussed?
- Is the executor comfortable with and prepared for the personal liability involved?

By now, it should be evident that expertise and continuity is needed in handling an estate. Naming an individual who does not have the time or ability can be a disservice to all who are involved. Alternatively, there are professional executors

with the knowledge and experience to administer an estate of all levels of complexity. These services are typically provided by trust companies, some accountants or lawyers. A reputable professional executor can administer even large and complex estates, providing professional and thoughtful administration of estates and testamentary trusts. In the event a family member or close friend is a preferred executor due to their understanding of the testator's intentions and sensitivity to family dynamics, a knowledgeable and experienced professional can be hired to provide executor support, ensuring that the executor is not alone in managing the many responsibilities of the role.

Should you want more information about the role of the executor (such as an executor checklist) or other estate planning matters, feel free to contact the author:

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