

Should Your Family Member Serve as Executor or Personal Representative



The Cost and the Benefits

For the person named in someone's Last Will and Testament (hereinafter "Will") as an Independent Executor or appointed by the Court as an Administrator of an Estate where there is no Will there is a very heavy burden of legal responsibilities and duties owed to the deceased, the heirs, the Estate's creditors and the Court. The Executor/Administrator often will need determination and courage to face many issues and circumstances involving the various parties. Certainly it is an honor to be chosen as the Executor/Administrator of an Estate, but there can be heavy costs paid by the person named. Some of those costs are:

- Time away from one's personal business;
- Emotional capital;
- Personal energy;
- Need for education involving legal, accounting and tax issues;
- Acceptance of a leadership role in a family that could be in turmoil due to the loss of a loved one;
- Dealing with potential family disputes that may rise to the surface after many years;
- May require travel; and,
- Potential personal legal and financial liabilities.

First, there are both legal and tax timelines that have to be met. If one does not meet these timelines, they can be removed as the Executor/Administrator or could be personally liable for penalties and interest to the IRS for any late tax payments owed by the Estate. There are other brief articles on this website that elaborate on the rules and timeline of settling an estate in Texas. At the very least, one should visit with one of our experienced trust officers or your attorney and CPA to review these rules, timelines and duties. Practical and efficient use of Professionals such as a trust department acting as your agent with the support of a qualified attorney or CPA can lessen one's burdens and concerns.

Second, all estates are different, so make note of unique issues that you would face and discuss them with your advisors and ask them for guidance.

To Serve or not to Serve? ... That is the Question

After you have done a preliminary review of the estate with the help of a qualified advisor regarding any potential, financial, tax, legal or conflicts with heirs, you should ask yourself if you have the ability, emotional capacity and time to devote to the estate settlement process? You can hire a trust department, attorneys, accountants, and other "agents" and assign them tasks to perform for a stated fee. Professional service providers can step in and assist in performing many duties, but there will likely be "judgment calls" that in the final analysis can only be made by you as the Independent Executor or Administrator.

Often we see Wills where the decedent may have designated the independent executor many years in the past and circumstances change since people move, grow older and health issues arise. If the burden will be too much for a named independent executor, resigning may be the best solution as it will allow the estate settlement process to move forward. In many cases, the testator will name a secondary independent executor to step in if the primary independent executor does not accept the appointment. (Note that once appointed, the Independent Executor or Court appointed Administrator is responsible for actions taken or not taken until they are replaced.)

Also consider if there are other family members who are better suited to perform the duties of the Independent Executor or Court appointed Administrator? If the named independent executor resigns and there is not a secondary named independent executor who will serve, the probate court will determine the party best suited to complete the process. Appointment of a professional Independent Executor, such as a bank trust department, is also a prerogative of the Court.

Recognize that all heirs may not be satisfied with every action taken by the Independent Executor or Administrator. However, it is not the primary duty of the Independent Executor or Personal Representative to just make the heirs happy. One's duty as an Independent Executor is to apply prudence, loyalty, fairness, reasonable care to ALL parties while being mindful of applicable laws and taxes. This will be the standard by which an Independent Executor or Administrator will be judged.

What are the Benefits of Serving?

There are some real benefits in serving as Executor or Personal Representative of an Estate. These include:

- Knowing that you honored the wishes of someone who trusted you with the resources they spent a lifetime to accumulate;
- You may likely understand certain family issues and special assets better than an outsider;
- You may have intimate knowledge of their business affairs and know how to maintain and enhance asset values for the benefit of all heirs;
- You may also have a greater ability to work within the family dynamics and personalities;
- You are normally entitled to be reimbursed for your expenses and compensated reasonably for the duties you have performed. (refer to the Texas Probate Code for details involving Texas Estates); and,
- The process can be rewarding, educational, and satisfying as you properly and effectively perform your duties.

IMPORTANT: This brief summary of planning ideas is for discussion purposes only. It does not contain legal, tax, investment, or insurance advice and cannot be relied upon for implementation and/or protection from penalties. Always consult with your independent attorney, tax advisor, investment manager, and insurance agent for final recommendations and before changing or implementing any financial, tax, or estate planning strategy.

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