

Being an Executor



Public Legal Education and Information Service of New Brunswick

What is an executor?

An executor is the person or trust company named in a will to administer an estate. The person who made the will (called the **testator**) expects the executor to settle the estate and distribute the property to the beneficiaries according to the instructions set out in the will.

What is included in the estate?

The estate includes everything owned by the testator at the time of his or her death. For example, the estate might include a house, cottage, automobile, bank account and investments. It would also include any property that comes into the estate after the testator's death. Since the testator is not there to administer it, the executor takes on the responsibility for handling all matters connected to carrying out the wishes of the deceased and winding up the estate.

What are the executor's duties?

The executor is responsible for:

- arranging the testator's funeral,
- taking control of all the testator's property, documents and accounts and making a list of them,
- having the estate probated if necessary,
- paying the debts of the estate, and
- distributing the estate to the beneficiaries.

What does the executor do upon learning of the testator's death?

As soon as the executor learns of the death of the testator, the executor must decide if he or she is still willing and able to act as executor. Usually, the person named as executor has discussed this with the testator in advance so this should not be a problem.

The first event that must take place is the testator's funeral. Ideally, the testator's family and executor will know where to find any specific funeral instructions. These should be in a safe place so the executor can refer to them at the testator's death. If this has not happened, the executor will have to find and read the will to see if it has instructions about the funeral.

What if the will does not give specific instructions? What if there are no instructions for burial arrangements?

Where the testator has not given instructions, such as the place of burial or the type of funeral, the executor has the right to decide the matter as he or she thinks best. If there is doubt about the testator's wishes, the executor should allow the family of the testator to choose an appropriate funeral arrangement. The funeral expenses are payable out of the estate.

When does the executor read the will?

As soon as possible, the executor should find, and carefully read, the original will. This should help the executor confirm certain points, such as:

- notice to next of kin and heirs,
- security of properties and other goods,
- special arrangements to be made if perishable goods are involved,
- steps to be taken to meet the immediate financial needs of dependents,
- determination of cash needs for the administration of the estate.

Can I refuse to act as an executor?

You are under no obligation to act as an executor. You can refuse the position when the testator first asks you. Or, if you agree to act as the executor, you may still change your mind at the time of the testator's death. If you are unable to act as executor when the beneficiaries ask you to distribute the inheritances, you can

refuse to act. You will automatically lose all rights of executorship. You do not have to make a formal renunciation in court.

If I start my duties as executor can I change my mind later?

Once you begin to carry out the duties of an executor, you cannot just walk away. By law your intervention in the estate makes you responsible for the executorship. If you wish to back out after you have taken control of the testator's property, you must formally renounce your position. To do this, you must submit the renunciation in writing to the Probate Court.

This does not mean that you cannot ask about the assets and liabilities of the estate. However, your actions may establish you as the executor. You should therefore be careful before taking any actions that may commit you to this position.

Can I be held responsible for mistakes I make while acting as an executor?

It depends on the circumstances. You must act for the estate as if it were your own property. An executor who is reasonably careful in carrying out his or her duties will probably not be held responsible if things go wrong. However, if the executor is careless, he or she can be held responsible for the losses suffered by the estate. For example, if you make frivolous investments or unauthorized expenditures on behalf of the estate, you may be liable. You might have to repay losses personally.

Can I get help if administering the estate becomes complicated? May I hire a professional?

Yes you may. It is important that you handle the estate properly because you may be held responsible for your mistakes. When you are in doubt about what to do, it is wise to consult a professional. The estate would pay for reasonable fees charged for professional services.

When might I need the help of a lawyer?

A lawyer may be able to help an executor in the following ways:

- give opinions about the meaning of the will,
- offer advice on your duties as executor,
- prepare deeds and other instruments of conveyance,
- apply for probate of the will where necessary,
- prepare and obtain receipts for inheritances delivered, etc.,
- arrange for the registration of assets in the name of the beneficiary.

Will I be paid for my services as executor?

The executor has the right to be paid for his or her services. The fees that you receive as executor are taxable (to you). If the testator has not arranged for payment in the will, then you can make a claim for financial compensation before the Probate Court. Family members will often agree to administer an estate without taking a fee. You should discuss this with the testator. Whatever you agree to should be set out in the will.

The executor also has the right to be reimbursed for all reasonable expenses made while administering the estate.

When do my duties as executor end?

The executor's duties end as soon as the estate is completely settled. This normally means when all the debts of the estate have been paid, including income tax, and the testator's property has been distributed according to the will.

In rare situations, it may be necessary for the executor to reopen the estate after it is closed. For example, the discovery of sums of money,

up to 15 years after the death of the testator, would force the executor to reopen the estate and distribute the money according to the instructions in the will.

Is there a deadline for closing the estate?

No, there is no strict rule about the length of time an executor is allowed to complete his or her duties. It all depends on the complexity of the estate. In most cases, one year is considered a reasonable period of time. The longer the executor does take, the more likely it is that the beneficiaries will complain. They may apply to the Probate Court for an order compelling the executor to carry out his or her duties on a timely basis.

Can the beneficiaries have me dismissed as executor?

Yes. Any interested party who has reason to believe that an executor has acted improperly in the administration of an estate may start a legal action to have the executor removed. They do this by making an application to the Probate Court. They must show that the executor committed a fraud or acted in an unreasonable manner which has resulted in a loss to the estate. In other words, they cannot request that you be dismissed simply because they do not like one of your decisions.

Do I have to submit accounts to the Probate Court?

In the administration of simple estates, the beneficiaries often sign a "release". This relieves the executor from his duty to account to them for the administration of the estate. However, any beneficiary who has not signed such a release or who has done so without knowing what he or she signed, may apply to the Court to require the executor to account to the Court for the administration of the estate.

This pamphlet does not contain a full statement of the law in this area and laws change from time to time. Anyone who needs specific legal advice should talk to a lawyer. You may wish to check out our other pamphlets on wills and estate planning.

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