

Choosing an Executor



Public Legal Education
and Information Service
of New Brunswick

What is an executor?

An executor is a person or trust company whom you name in your will to carry out (“execute”) your wishes and distribute your estate when you die. Your **estate** is what you own at the time of your death. It may include all kinds of property such as a car, a house, a cottage, land, furniture and jewellery. Other property may come into your estate after your death such as interest on investments and income from rental property.

What responsibilities will my executor have?

Generally speaking, your executor will:

- arrange your funeral;
- obtain the original copy of your will;
- take control of your estate and make a list of your property;
- apply to the court for letters probate, where appropriate;
- administer the estate and pay all outstanding debts;
- distribute your property according to your wishes as set out in your will.

Whom may I appoint as my executor?

You can choose either a person or a trust company to act as your executor. If you choose a person to be your executor he or she must be nineteen years or older. Most people choose a relative or close friend as executor. If your estate is large or complicated you may wish to appoint a trust company to act as your executor.

As a last resort, if you do not have anyone available to act as your executor you can appoint the **Public Trustee**. You should contact the Public Trustee beforehand to get approval and to get details on how to proceed and what the fees will be for this service.

What should I consider when choosing an executor?

You should choose someone you trust to carry out your wishes. There is a great deal of responsibility involved in acting as an executor so you should choose someone who is willing and able to carry out those responsibilities.

You should consider the following:

- 1. The qualifications of your executor.** You should choose a responsible person whom you trust. The duties of an executor can be time-consuming. Your executor should be someone who is able and prepared to keep careful records and to get accounting, financial and legal advice for the more difficult matters.
- 2. The age of your executor.** Your own age may indicate whether it is wise to choose an executor who is older or younger than you. In any case, to apply for letters probate, your executor must be at least 19 years of age.
- 3. Asking family members to act.** If your will is not complicated and your beneficiaries are family members you may wish to appoint an adult member of your family as your executor. Many people appoint their spouses as their executors. Being a financial expert is not necessary as long as your executors have access to competent advisors.

4. Asking non-family members to act. Friends and business associates are often good choices, but only if they are competent, honest, and know your beneficiaries. If your estate includes business interests it is preferable not to name your business partner as your executor.

5. Asking professionals to act. If your estate is large or complicated or you prefer not to have friends or family act as your executor, consult your lawyer about the qualifications your executors may need. It may be appropriate to consider appointing a trust company, lawyer or other professional as your executor.

Should I ask the person I name as my executor to accept the position?

Yes, you should always discuss the role with the person in advance so that the person you choose knows what is involved with the job. Remember, the person you name in your will as executor has the right to refuse to act as your executor.

Should I choose an alternate executor?

Yes, you should appoint an alternate to replace your executor in case your first choice is unwilling or unable to act as executor at your death. Even if you have chosen your spouse to be your executor it is a good idea to choose an alternate.

If your executor is unable to act and you have not named an alternate in your will, the Probate Court will have to appoint one. Generally, a member of your family or another appropriate person would apply to the court to administer your estate. The court-appointed replacement is called an *administrator*. This person exercises all the powers you gave your executor in your will. However, the person appointed by the Court may not be someone you would have chosen to administer your estate.

If no one is willing or available to act as administrator, the Public Trustee may be asked to be appointed.

When should I consider asking a professional or the Public Trustee to act as my executor?

Every estate is different so it is hard to say when a professional should be appointed. Executors can always hire professionals to advise and assist them in the administration of the estate. However, executors cannot leave important decisions to others, like whether to sell an asset or whether to invest in shares or bonds.

If your will is particularly complex, you may feel that family members or friends do not have the necessary experience, time and skills to be your executor. A trust company, lawyer, or accountant may be the solution. Professionals may offer the familiarity with tax law, investment management, real estate or business administration which is required to administer your estate.

If you do not have anyone to act as an executor, you could contact the Public Trustee’s Office to discuss the role that they might play in administering your estate.

Can I have more than one executor?

Yes, you can choose two or more persons to act together as your executors. If you do this, you should include a clause in your will stating how they are to settle differences of opinion between them.

In certain circumstances it may be a good idea to name a professional as one of several executors. This can add an impartial element to the administration of your estate. If you wish, you can appoint a family member or friend to act jointly with the professional.

Do I have to pay my executor?

Often family members will agree to administer the estate without taking a fee. However, your executor has the right to be paid for his or her services. If you do not provide for payment in your will, your executor can apply to the Probate Court for a reasonable fee. There are two reasons why you should make arrangements to pay your executor:

1. You clearly authorize your executor to pay himself or herself, and
2. You set a maximum limit on how much your executor may take.

If you have more than one executor, they will have to share the fees, whether they are set by the Court or stipulated in your will. Fees received by executors are taxable in their hands.

If you appoint professionals as your executor, such as lawyers or accountants or a trust company, they will expect to be paid for their services. You should work out in advance whether you must pay the professional executor an executor’s fee instead of that professional’s ordinary charges, or in addition to such charges.

What should I do if my executor dies before I do?

If the executor you appointed in your will dies and you have not named an alternate in your will, you should choose another one right away. You do not have to make a new will. You can name your new executor by adding a **codicil** to your will. This is a document used to amend wills. Seek a lawyer’s advice. Remember, if you die without naming a replacement, the Probate Court will have to appoint one for you.

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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