

10 Tips For Being An Excellent Executor

YOU MUST FOLLOW WILL

- ☐ As Executor, you may not think its fair if the beneficiaries are not being given an equal share of the estate but your job is to do exactly what the Will states.
- ☐ You also cannot give personal items to those not entitled to them. For example a Royal Doulton figurine to a niece who is not listed in the will.

VALUTATIONS

- ☐ Wherever possible you should get appraisals on all assets, otherwise as Executor you may be liable for the loss if the item was sold for less than its appraised value at the time of death
- ☐ If you are going to sell something for less than value, you must have permission from the beneficiaries
- ☐ Beneficiaries may buy items but it would have to be at the appraised value unless you have permission from the beneficiaries to sell for less
- ☐ Executors should be careful about purchasing assets of the estate because there is a conflict of interest

TALK, TALK, TALK, & EMAIL

- ☐ The more beneficiaries are kept in the dark the more upset they will be. Remember, if cannot get information from the Executor, their next step is to hire a lawyer!
- ☐ In our experience, Executors are sued just as often for the perception of wrongdoing as actually doing it
- ☐ Set up a separate email account to deal with all estate issues.
- ☐ Advise beneficiaries you will provide them with a monthly report and that if someone emails you regarding the estate, you will provide a response and include all beneficiaires in the discussion
- ☐ Not everyone is entitled to see the Will. Specific beneficiaries don't get to see the Will however, all residue beneficiaries do.

MISMANAGE – NOT!

As Executor, you need to take your duties seriously and act them out in a responsible and reasonable manner.

- ☐ Create an bank account for the estate and all income and expenses must go through this account
- ☐ You cannot invest foolishly. For example, you do not want to spend thousands of dollars of the estate's funds to do renovations to the home, only to find out later the upgrades did not substantially increase the value of the home
- ☐ You must protect all of estate assets. The locks should be immediately changed on the home
- ☐ Advertise to find all creditors

RECORD IT – IF THERE IS NO LEDGER, THEY WILL ALLEDGE!

- ☐ Keep an Executor's Log that tracks all of your mileage and any expenses you incur in your role of Executor
- ☐ Keep detailed records – what you purchased, the amount and why.
- ☐ Keep detailed records of all income – who you sold an item to, the amount, etc
- ☐ Remember, bank statements are not enough.
- ☐ Consider hiring a book keeper
- ☐ Provide the beneficiaries with a detailed monthly report

KNOW THE LAW

- ☐ The courts do expect the Executor to know and understand the law when closing an estate.
- ☐ For example, If there were loans, gifts or advances given to a beneficiary they must be repaid unless the Will states otherwise. Money given to a child is considered an advance and must be paid back to the estate. If there are 3 beneficiaries and one owed \$10,000 to the testator, as Executor, you must add the \$10,000 to the estate, divide and then subtract from that beneficiary's share.
- ☐ Look for a HOTCHPOT clause in the Will. This means the loan/advances are forgiven

NEUTRALITY

- ☐ You must treat all beneficiaries the same. You cannot provide one person with more information or give them access to the assets because you know them better than the others.
- ☐ If you want to allow beneficiaries to have access to items within the home, you have to make sure they all go into the house together and each have the opportunity to pick what they would like.

BE REASONABLE

- ☐ Communication will avoid problems. Beneficiaries will think delays in settling the estate are your fault unless you outline differently.
- ☐ Rule of thumb - Executors should be able to close an estate and start dispersing funds within one year. This is a guideline but can it be extended if there is unclear wording in a Will, a missing heir or a business to wind up.
- ☐ Consider giving beneficiaries an interim distribution. This can help keep them happy until a clearance certificate from the Canada Revenue Agency is received.

NEGLIGENCE = CONSEQUENCES

There are situations where Executors have to appear before the courts to explain their actions. If the court feels you have not done your duties as Executor properly, they can take the following action:

- Court can impose deadlines with specific dates you must complete your duties
- May require you to provide detailed accounting that outlines what you have received and spent on behalf of the estate.
- Force accounting to the courts
- Reduce your Executor's compensation
- Remove you as the Executor. This would be a legal motion against you that is public information
- Make you repay estate funds personally
- You could be found in contempt of court
- And worse case scenario, criminal charges could be laid

IN SUMMARY:

1. Change the locks immediately to protect the assets
2. Direct all mail to your address
3. Create an email account to handle all communication for the estate and send a monthly report to beneficiaries
4. Advertise to find all creditors
5. Consider purchasing Executor's insurance to protect yourself in the case of litigation
6. Consider hiring help – book keepers, accountant, estate lawyer if you are having difficulties
7. Get a tax clear certificate before you disperse all of the estate funds