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How to be an Executor Checklist

Introduction

Generally, the Executor is an individual, bank or trust company named in a decedent's Last Will and Testament ("Will") to carry out the provisions of the Will and administer the decedent's estate. A decedent is someone who has died, and the decedent's "estate" is all of the property owned by that individual at the time of his or her death.

The Executor is generally responsible for having the Will probated. This means having the will admitted to the appropriate court, e.g. the Surrogate's Court. In some instances if the decedent had a revocable living trust there may be few or even no probate assets. In such instances the process of having the will admitted to probate may be entirely avoided. If this occurs it may still be advisable to file the original will with the court. When the will is admitted the court will issue documents authorizing you as executor to act called "letters testamentary."

Once appropriate letters are received, the executor must collect the assets of the decedent that pass under the Will (i.e., not jointly held property, insurance and pension benefits payable to named beneficiaries), paying the decedent's debts (including funeral expenses, medical expenses and debts of the decedent), paying administration expenses, and paying any taxes that are due from the estate. Such taxes can include the decedent's final income taxes, gift taxes, the federal or state estate taxes due, if any, and income taxes on income earned by the estate during the probate of the estate.

The administration of an estate can take anywhere from several months to years (if there are assets that cannot be collected, debts that have to be resolved, or litigation). The time frame also depends on the size and complexity of the estate. During this time period, the Executor is generally responsible for investing and managing the estate's assets and providing for the management of any assets owned by the decedent and the decedent's estate. Once all of the bills and taxes have been paid, the Executor is responsible for distributing the remaining assets in accordance with the terms of the Will. Finally, the Executor will be required to account to the beneficiaries (and sometimes to the Court) for every asset collected, all gains and losses, all income and other receipts during the estate administration, and all of the property paid out or distributed to the decedent's creditors and beneficiaries.

Although this article uses the term "Executor" many estates have multiple executors. If there was no will and the court had to appoint a person to act, that person is called in some jurisdictions an "administrator." If the decedent's dispositive document was a revocable living trust, the fiduciary responsible for handling the estate would be a trustee. The terminology will differ by situation, and

Following is a detailed list of many, but not necessarily all, duties and responsibilities of an Executor. Remember, every estate has its own unique nuances, specific assets, and issues. So any checklist is at most a general starting point.

Executor's General Duties and Responsibilities

1. **Review of the Will.** A review of the decedent's Last Will and Testament is essential for the Executor to become familiar with the decedent's estate plan, to ascertain if the Will is valid and to provide the Executor(s) with instruction of how the estate is to be disposed of.
 - a. Confirm that a Will exists and, if so, review and note any special instructions.
 - b. The original Will must be safeguarded until filed with the Surrogate Court.
 - c. If it is determined that there is no Will, the estate must be administered through the appropriate surrogate court and the administration statute for the state in which the individual was domiciled.
 - d. At this point the fiduciary may wish to meet and talk with family members, potential estate attorney and interested parties to discuss the document provisions and settlement process.
2. **Death Certificates.** The Executor should request multiple original death certificates for the decedent. If the decedent was predeceased by a spouse, a copy of the predeceased spouse's death certificate should also be obtained as the Executor will likely need it during the estate probate/administration process.
3. **Probate Will or Administer Estate with the Court.**
 - a. By probating the Will or administering the estate with the surrogate's court, located in the county and state in which the decedent resided at the time of his/her death, the fiduciary is receiving court authority to act on behalf of the estate.
 - b. Once probated/administered, the court will issue the appropriate letters authorizing the fiduciary to act (Letters Testamentary are issued when a Will is probated, and Letters Administration are issued when there is no Will and an Administrator is appointed).
 - c. The Executor will determine whether trusts are to be funded under the Will and whether the trustee(s) appointed under the Will are willing to act. If so, then Letters Trustee should be applied for while the Will is being admitted to probate.
4. **Notice of Probate (New Jersey).**

- a. Once the Will is probated a Notice of Probate must be prepared and sent to all named beneficiaries and heirs at law advising them of the probate/administration, the naming of the fiduciary and offering them a copy of the Will.
 - b. The Notice of Probate must be sent within Sixty (60) days after the probate of the Will.
 - c. Within Ten (10) days after the Notice of Probate is sent, Proof of Mailing must be filed with the appropriate surrogate court.
5. **File IRS Form 56 and apply for an Estate Identification Number (“EIN”).** File Form 56 (this form lets the IRS know who to contact in the event of any potential tax issues) with the IRS and apply for a tax identification number (“EIN”) for the estate. The trustees of every trust will also need a separate EIN for any trusts established under the Will or Revocable Trust and should also file Forms 56.
6. **Change Address.**
 - a. The Executor must determine how decedent’s mail should be handled going forward and supply a change of address card to the United States Post Office appropriately.
 - b. The address should also be changed with the companies issuing bills and statements to the decedent.
 - c. The Executor should also change the locks on all property owned by the decedent, make sure the property is properly secured and alarmed, and properly and adequately insured.
7. **Inventory of Assets and Liabilities.**
 - a. The Executor will begin to identify outside assets and liabilities through mail received, family, accountant and other advisors. A review of the prior year income tax return will also assist the Executor in identifying the assets and liabilities of the decedent.
 - b. As soon as all financial documentation is gathered a detailed inventory of the estates assets and liabilities should be prepared.
8. **Social Security.** If the decedent was receiving Social Security benefits when they passed away, and the funeral home has not already done so, the Executor must advise the Social Security Administration of the decedents’ passing and arrange for any improperly paid benefits to be returned.
9. **Estate Account.**

- a. Once Letters Testamentary are received the Executor will take an original Certificate and the EIN assigned to the estate and open an Estate account.
- b. The decedent's cash accounts held in their sole name, without beneficiaries, should be closed and transferred into this estate account.
- c. The Executor/administrator has fiduciary responsibility to adhere to the Prudent Investor Act. In short, a fiduciary must responsibly invest the estate's money, should act with prudence, discretion, intelligence, and regard for the safety of principal as well as income.

10. **Safe Deposit Box.**

- a. The Executor will determine if the decedent had access to a safe deposit box at the time of death.
- b. If it is determined that there was access to a safe deposit box, the Executor must collect and inventory the box's contents.

11. **Date of Death ("DOD") Value and Liquidation Instruction Request.**

- a. The Executor must write to financial institutions holding assets of the estate to ascertain and/or verify the value of the assets as of the decedent's DOD.
- b. The Executor will also request guidance regarding transferring assets to the name of the estate, liquidation of the asset in the event that it is determined that the assets should ultimately be liquidated and ultimate distribution if it is determined that the asset should be distributed in kind.
- c. Income tax ramifications must be considered when determining whether to liquidate and make ultimate distributions in cash or in kind.

12. **Verify Debts.** Write to all of the decedent's known creditors and verify the debts of the decedent and arrange for payment once debts are confirmed.

13. **Inventory and Appraisal of Decedent's Personal Property.**

- a. An inventory should be prepared of all the decedent's personal property and these items should be properly secured.
- b. The assets are to be appraised by a qualified appraiser.

14. **Government Benefits.**

- a. As noted above, if the decedent was receiving Social Security or any other

government benefits, the appropriate authority must be notified of the decedent's passing.

- b. In addition, the Executor will file claims for any veterans or Social Security benefits due the decedent and for life insurance payable to the estate.

15. IRA and Other Retirement Benefits.

- a. Letters should be written to the decedent's employer or former employer inquiring whether any benefits are due to a named beneficiary or decedent's estate.
- b. Employment contracts or deferred compensation arrangements that the decedent may have held should be reviewed to determine whether or not payments are due to the estate.
- c. If the decedent had an Individual Retirement Account ("IRA") consideration must be given to timing of minimum distributions, rollovers, sub accounts and IRA beneficiary accounts.

16. Real Property.

- a. All real estate should be inspected by the Executor, and leases and/or mortgages should be reviewed. Consider whether the real property of the estate will be sold by the estate or distributed to one or more beneficiaries of the estate.
- b. An MAI Certified Appraisal of all real property should be prepared indicating the property value(s) as of the DOD.
- c. If the decedent owned real property, as discussed above, the Executor must make sure that the property is secured, alarmed and properly insured.

17. Insurance.

- a. The Executor will examine all insurance policies of the decedent, including policies on real estate, personal property and/or automobiles owned by the decedent, in addition to life insurance policies on the decedent's life and/or owned by the decedent on another's life.
- b. It may also be necessary when determining which estate debts are to be paid for the Executor to review medical insurance policies of the decedent to insure that the estate is paying a valid debt of the estate.
- c. The Executor will have the appropriate policies endorsed to the estate and the coverage increased and premiums paid as needed.

18. **Automobile(s).**

- a. If the decedent owned a car, title and insurance must be reviewed and changed to reflect the owner as the estate and determination should be made as to the disposition of the car.
- b. In addition, the car is to be valued as of the DOD.

19. **Review Decedent's Financial Records.**

- a. The Executor should gather and review the decedent's financial records for the years immediately prior to death, including canceled checks and brokerage statements, and information regarding insurance policies on decedent's life owned by others and owned by decedent on anyone else's life.
- b. During the review of the prior year's financial records the Executor will ascertain whether there were taxable gifts made during the decedent's life and, if necessary, will have gift tax returns prepared and filed.
- c. Personal and business income tax returns of the decedent should be reviewed for a minimum of Three (3) year period prior to death as well.

20. **Consider Non-Probate Assets.**

- a. Assets that pass by way of beneficiary designation are considered non-probate assets.
- b. Although these assets pass outside of the decedent's estate, they must be considered for tax purposes.
- c. It will be necessary for the Executor to ascertain whether or not jointly owned property with right of survivorship, all trusts in which the decedent has an interest and property over which the decedent retained powers is includable in the decedent's gross estate for estate tax purposes.
- d. The Executor will ascertain whether title to various assets should be transferred and will have to determine how these joint assets will be treated for estate tax purposes. For example, if a property is owned jointly but not between husband and wife the consideration will have to be traced, otherwise the assumption for estate tax purposes is that the decedent owned the entire property.
- e. The Executor must consider estate tax allocation of non-probate assets, including but not limited to determining how estate taxes on non-probate assets are to be handled pursuant to the terms of the Will and, if it is determined that estate taxes are to be allocated to non-probate assets, the Executor must collect the allocable estate taxes from the appropriate beneficiaries of these non-probate assets.

- f. If the decedent funded any 529 Plans during their lifetime there are many issues to be considered, including but not limited to who the owner of the plan is, who is the successor, and how was the plan funded (i.e. was it front loaded) and how should the plan be treated for estate tax purposes.
- 21. **Inventory of Assets/Value of Estate (New York).** The Executor of a New York estate is required to file with the court a list of assets constituting the gross estate for tax purposes. This inventory of assets must be filed with the court by the later to occur of the following:
 - a. If a Form 706 Estate Tax Return is required to be filed for the estate, the due date for the filing, including any extensions of time received for the filing;
 - b. If a New York Estate Tax Return is required, the due date for the filing, including any extensions of time received for the filing; or,
 - c. Six (6) months from the date of the issuance of temporary or preliminary letters, limited letters, ancillary letters, full letters of administration or Letters Testamentary.
- 22. **New Jersey Inheritance Tax Return (“NJITR”).**
 - a. The NJITR must be filed if any of the estate beneficiaries are anyone other than a Class A (which include a spouse, child or step-child), if there is a trust, disclaimer or gifts within Three (3) years prior to DOD to anyone other than a Class A beneficiary.
 - b. The NJITR is due Eight (8) months after the DOD.
- 23. **Disclaimer(s).**
 - a. The Executor must determine whether anyone will be disclaiming their interest(s) in the estate.
 - b. If so, the disclaimer(s) must be prepared, signed and filed with the surrogate’s court prior to Nine (9) months from the DOD.
- 24. **Alternate Valuation Date (“AVD”).**
 - a. If the estate is subject to a federal estate tax, the AVD will need to be determined for the assets owned by the estate (i.e. stocks, bonds, real estate, etc.).
 - b. For estate tax purposes, the AVD is either Six (6) months after the DOD, for property not disposed of prior to that time, or the date on which property was distributed, sold, exchanged or otherwise disposed of if prior to the Six (6) month date.
 - c. Once the alternate value is calculated, the Executor must determine which value results in the least overall Federal Estate Tax (i.e. DOD vs. AVD).

- d. If the alternate value is elected then all applicable assets must be valued as of the AVD.
25. **Decedent's Final Income Tax Returns (Form 1040).** As applicable, federal and state returns must be prepared and filed for the decedent's last year of life. Various expenses, including medical and miscellaneous estate administration expenses, may be taken as a deduction on the decedent's final income tax return or on the estate income tax return (Form 1041). An accountant should be consulted in this regard.
26. **Fiduciary Income Tax Return-Federal.** A Federal Form 1041, Fiduciary Income Tax Return, must be filed for any fiscal year or calendar year of an estate which has gross income of \$600 or more or has a beneficiary who is a non-resident alien.
27. **Fiduciary Income Tax Return-State.** A state Fiduciary Income Tax Return must be prepared and filed if the estate's gross annual income exceeds \$10,000 *or* if below \$10,000, if distributions were made to residual beneficiaries.
28. **K-1.** If distributions were made to residual beneficiaries the Executor must arrange for K-1's to be filed for each beneficiary.
29. **Executor(s)/Administrator(s) Commissions.**
- a. The fiduciary must determine whether they will be taking commissions for serving as fiduciaries.
 - b. If commissions will be taken, they must be computed prior to the filing of the New Jersey Inheritance Tax Return and Federal Estate Tax Return (both income and corpus commission; New Jersey does not accept income commission as a deduction).
 - c. If commissions are taken they are income to the fiduciary.
30. **Federal Estate Tax Return (Form 706).**
- a. If the estate is valued at \$5,000,000 (inflation adjusted) or more a federal estate tax return must be filed and tax paid, if applicable.
 - b. The federal estate tax return is due Nine (9) months after the DOD.
 - c. The Executor must be aware that Generation Skipping Transfer Tax ("GST") issues may be present in the estate and they must consider how these, if applicable, will be addressed.
 - d. A return should be filed if there is a surviving spouse to preserve (port) the exemption. Filing a complete, accurate and timely return is the only way to elect portability. **The executor must retain a CPA to meet this deadline.**

31. **New Jersey Estate Tax.**

- a. If a New Jersey estate is valued at \$675,000 or more a New Jersey estate tax return must be filed and tax paid, if applicable.
- b. The New Jersey estate tax return is due Nine (9) months after the DOD.

32. **Tax Waiver (New Jersey).** A New Jersey Estate Tax Waiver should be filed if a New Jersey estate tax return is not required and all beneficiaries are Class A.

33. **New York Estate Tax (Form ET 706).**

- a. A New York estate tax return may be required to file and tax paid, if applicable. The New York exemption varies each year as it is increased towards the federal exemption amount.
- b. The New York estate tax return is due Nine (9) months after the DOD.

34. **Accounting.**

- a. Generally, an informal accounting should be prepared and submitted to the estate's beneficiaries.
- b. If the beneficiaries approve of the accounting, an agreement should be entered into indicating their approval and releasing and indemnifying the fiduciary of liability.
- c. If the beneficiaries do not approve the accounting it will be necessary to submit a more formal accounting to the court for their approval.
- d. In certain circumstances a Waiver of Accounting may be appropriate (i.e. when the Executor is the sole beneficiary).
- e. When determining what level of formality must be adhered to with the accounting the Executor will consider, among other things, the comfort level of the Executor and the relationship with and between the beneficiaries.
- f. There are certain formalities that must be adhered to when a charity is among the estate's beneficiaries.

35. **Receipt Release and Refunding Bond ("RRRB").**

- a. RRRB are to be prepared and signed by beneficiaries each time a distribution is made. These signed RRRB are to be filed with the surrogate's court.

- a. The Executor must file a statement with the court as to why the estate has not been fully distributed within Two (2) years of the issuance of first permanent letters. This statement must be filed if the estate has not been fully distributed and/or a final accounting with petition for settlement filed with the court where a federal estate tax return is not required.
- b. Where a federal estate tax return is required, the Executor must file this report within Three (3) years from the date of issuance of the first permanent letters if the estate is not fully distributed.

40. **Finalizing the Estate.**

- a. Once closing letters are received from the appropriate taxing authorities, the accounting has either been approved or waived, and the final RRRB are signed by beneficiaries, all relevant documentation is to be filed with the court and a final income tax return prepared and filed on behalf of the estate.
- b. Final distributions will be made to beneficiaries (the Executor will decide whether estate assets should liquidated and distributed in cash, or distributed in kind).

