
Executors and their duties

Scotiabank®, The Bank of Nova Scotia Trust Company

Your choice of executor - or your acceptance of the role – is a decision that should not be made lightly. For many Canadians who have prepared a Will, the choice of executor was likely one of the least considered parts of their plan. Most testators pick a family member or friend, without giving much thought to what the role entails. Likewise, many individuals take on the role of administering an estate without fully appreciating what they are getting into.

What is an executor?

An executor (liquidator, in Quebec / estate trustee with a Will, in Ontario) - appointed by the testator in their Will - is responsible for administering the deceased's estate and distributing the property in accordance with the terms of the Will. Where the deceased dies without a Will, or intestate, an administrator (estate trustee without a Will, in Ontario) performs a similar role, but must follow the provincial intestacy rules with respect to the distribution of the deceased's property. An executor can be an individual or individuals and/or a trust company, such as Scotiabank. Where an individual is named, testators are generally advised to appoint an alternate to act in the event the first named individual is unable or unwilling to assume the role. Where a trust company has been appointed, alone or jointly with an individual, a backup appointment is not usually required.

Duties of an Executor

The duties of an executor can be demanding and time consuming. In addition to dealing with considerable paperwork, it may also mean having to cope with tax, inheritance and family property laws and court procedures, while at the same time addressing the demands of beneficiaries.

The executor's role generally begins with locating and reviewing the deceased's Will and ends with the closing of the estate accounts. In the interim, the executor must discharge a number of duties. While many tasks are common to all estates, the exact number or process will vary depending on the nature of the estate. The following is a list of some common duties:

- < Obtaining probate, where required
- < Securing all estate assets and obtaining valuations / tax costs
- < Preparing an inventory of assets and liabilities
- < Notifying all relevant insurance, health and pension benefit providers and filing related claims
- < Ensuring all valid estate debts are paid and receipts obtained
- < Ensuring all debts owed to the deceased are collected
- < Reviewing all relevant contracts and agreements (domestic agreement, partnership or shareholder agreements etc.)
- < Considering potential for claims against the estate and applicable limitation periods
- < Determining which, if any, assets are to be transferred in specie (in its present form) and which are to be sold
- < Preparing interim and final estate accounting

An executor also assumes a number of responsibilities in respect of the income tax obligations of the deceased and the estate. An executor is responsible not only for filing the deceased's terminal T1 (year of death return), but also any unfiled returns from prior years. Depending on the nature of the estate, they may also be responsible for filing T3 trust returns going forward. And, where the deceased owned property in a foreign jurisdiction and/or was personally connected (eg. held citizenship) to another country, additional filings may be required in the foreign jurisdiction.

In addition to the list of tasks or duties – some of which are routine, others more complex perhaps requiring specialized expertise – a testator (or potential executor) should be mindful of a few other key points. These include: time commitment and availability; legal responsibility and potential for family disharmony.

The administration of what is commonly termed an “immediately distributable” estate generally takes between 18 months and two years to complete, and may take much longer. Where the Will establishes trusts, the commitment may last for decades. Moreover, time may be of the essence. Failure to meet a tax filing deadline may, for example, result in the imposition of interest and/or penalties. Geography is a related concern. While certain executor duties can be performed online or at a distance, much work must be performed on the ground in person. For example, dealing with the contents of the deceased’s home and visiting the bank to inventory the safe deposit box. As such, an out-of-town executor may not be the best choice. The appointment of a “foreign” executor may present additional concerns.

The role of executor is not without risks. An executor who fails to properly discharge their responsibilities, may be held personally liable for any resultant loss. Interestingly, in certain jurisdictions, executors may now purchase insurance to protect against this possibility.

Depending on the situation the potential for family conflict may be a major concern. In such situations, the appointment of an independent, objective party may be best for all concerned.

Making an informed decision

Before deciding on your executor, or before agreeing to assume the role yourself, make sure you understand the various duties and responsibilities involved. Choosing the “right” executor can be key to an effective estate plan.