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## **Mistakes Executors Make**

Executors are bound by a bewildering array of responsibilities and duties. There is no official training manual, at least not one designed for the public, and they are often challenged by the conflicting demands of the job. Here are some common pitfalls that executors should avoid.

### **Failing to read, understand and follow the terms of the Will**

The Will is the governing document for an estate administration. Despite this fact, some executors view the Will as a “guideline.” Others may administer the estate based on their own interpretation of what the testator “really wanted” or on what they think the Will means, without a clear understanding of either its terms, such as “issue,” “per stirpes” or “in specie,” or what duties and powers they are authorized or obliged to exercise.

### **Not properly protecting estate assets**

One of the first duties of an executor is to locate and safeguard estate assets. Failing to identify an estate asset or to ensure proper protection (taking care of an ongoing business; collecting rents; raising rents where appropriate; securing adequate insurance coverage; changing locks; securing pets) can result in losses to an estate and claims against the negligent or careless executor. One of the major problems an executor may face occurs when one beneficiary resides in or occupies property belonging to the estate that is to be distributed to others or sold. The executor not only has a duty to protect the property against damage or destruction by the inhabitant but must also take appropriate steps to secure the property and even evict the resident!

### **Improperly dealing with personal effects**

All too often, executors ignore what the Will says about the personal effects of the decedent and distribute them as they believe the testator would have intended. Unusual or unique assets, artwork, wine, firearms, for example, each present their own challenges. They must be collected, valued, preserved and effectively handled.

## **Not communicating with beneficiaries**

An executor may be doing everything well and in a timely manner, but if he fails to keep the beneficiaries apprised, he's likely to run into problems. Estate administration can be very complex and can, legitimately, take time. No news is generally interpreted as bad news and often results in annoyed and anxious beneficiaries.

## **Undue delay in meeting estate obligations**

All too often, executors procrastinate or fail to meet deadlines and guidelines. Tax and other estate liabilities may be subject to strict deadlines. Many states also impose standards regarding the timing of distributions and the general progress of an estate administration.

## **Not prudently investing assets**

Once the assets of the estate have been collected, the executor has a duty to prudently invest them. Many Wills provide instructions concerning the executor's power to invest. Investing your own money is one thing; investing another's is a very different matter. An executor must always act in the best interests of the beneficiaries but sometimes beneficiaries of different classes have very different interests. As an example, a Will may establish a lifetime trust for the benefit of a surviving spouse and direct payment of income for life. The balance will then be distributed to others. The spouse may want the executor to invest in order to maximize income whereas the residuary beneficiaries may want to limit income and maximize growth. An executor must invest in a manner which is fair to both classes of beneficiaries.

## **Making distributions too soon**

Executors must first account for the liabilities of the estate: the decedent's debts, the expenses of the last illness, the funeral costs, estate and income taxes. While beneficiaries are interested in collecting their inheritance, the executor must first ensure that all of the assets of the estate have been collected and all of the liabilities paid. Rushing to accommodate the beneficiaries commonly results in mistakes, both in over and underpayment.

## **Making improper distributions**

It's pretty difficult to make an error when the Will says "pay \$10,000 to my sister Elizabeth if she survives me." It is more challenging to make accurate distributions when the "residue" (or net estate) is to be paid to a number of beneficiaries in unequal shares or where assets will be distributed not only in cash but "in kind."

## **Missing or overlooking a beneficiary**

This error can result from simple carelessness or a failure to properly interpret the language of the Will. For instance, in most jurisdictions, a gift to "children" or "issue"

includes children born outside of a marriage. It is not unusual that executors will fail to properly identify all of the members of a class of beneficiaries.

### **Improper delegation of duties**

As a general rule, executors are expected to personally discharge their duties. This does not mean that they should not hire help. They are permitted, and even encouraged, to engage counsel, accountants, investigators, investment advisors and others to help them complete the work but they should not allow an overly zealous co-executor to dominate and they must take an active role the administration process. At Berwitz & DiTata LLP we are skilled at guiding executors through these land mines and ensuring a smooth, efficient and effective estate administration.