



## Last Will and Testament of

# You've Been Named the Executor of a Will or Administrator – Now What?

When a person creates their Last Will and Testament (Will), they often name one or more persons that they trust to represent their estate when they pass. That's the Executor. The Executor's primary role is to carry out the decedent's wishes as laid out in their Will, and to wrap up the decedent's final affairs, such as paying off debts, collecting income, marshalling assets, managing property, paying final tax bills, and distributing assets to heirs and beneficiaries.

In the event that a decedent didn't have a Will, a court proceeding would be required. The court approves of an Administrator of the estate to handle the decedent's last affairs. The Executor and Administrator are personal representatives of the decedent's estate (Personal Representatives) and serve similar functions.

If you were named the Executor, hopefully, the decedent had told you in advance and the news does not come as a surprise to you. If you were named the Administrator of the decedent's estate, then it shouldn't be too much of a surprise since you should have been notified of and involved in the legal proceedings and accepted the appointment.

In either case, however, you could be in for a much bigger surprise than you anticipated and that's because Executors or Administrators are typically individuals who have little to no experience in the roles and responsibilities required.

Acting as the Personal Representative is a serious and somber undertaking. You will be acting as a fiduciary and held to a high standard for conduct and responsibility. As a result, you may be required to post a surety bond to protect the estate, its beneficiaries and creditors from your mistakes, negligence and other wrongful acts. You also may have personal liability to the beneficiaries and others for wrongful acts and negligence. You could even be personally liable for taxes owed if you don't handle the affairs of the estate correctly.

So, as the Personal Representative, you should know that you do not need, nor want, to act alone. At a minimum, you should be consulting and working with an attorney and accountant. For higher net worth or more complicated estates, you should also consult and work with other advisors, such as bankers, trust companies, business consultants, life insurance and financial advisors.

Let's briefly look at some of the broad categories of duties and responsibilities of a Personal Representative. Obviously, there are a lot of details and specificity within each category which we won't discuss here but if you've decided to act as the Personal Representative of a family member's or friend's estate, you will need detailed advice from your advisors. A good place to start might be your Security Mutual Life Insurance advisor. They are familiar with situations when life insurance claims are made. And, of course, you should consult with an attorney and accountant.

# 1

## **Preparation for Legal Proceedings:**

The designated Executor will locate the Will and submit the Will into Court for probate and petition the court to formally recognize the designated Executor as the Personal Representative of the estate. In the absence of a Will, typically, the person interested in serving as the Administrator will petition the Court to appoint them as the Administrator. At this point, an attorney should have already been selected. Once the court issues certificates of authority (sometimes called Letters Testamentary or Letters of Administration), the Personal Representative can request copies of death certificates and open bank and investment accounts in the name of the estate. All interested family members and other parties, such as potential creditors, will also be notified of the decedent's death and the court proceedings, if they don't already know, so that claims, if any, may be filed.

# 2

## **Investments and Assets:**

The Personal Representative will then identify, inventory, and collect all of the decedent's assets, such as stocks, bonds, mutual funds, bank accounts, life insurance, retirement accounts, real property, personal property, government benefits, pensions, collectibles, and more. Appraisals may be required to determine the value of each asset.

# 3

## **Debts and Liabilities:**

At the same time, the Personal Representative will identify and inventory all debts and liabilities. These may include mortgages, personal loans, credit card debt, utility bills, property taxes due, auto loans, hospital, and medical bills, etc. The Personal Representative is responsible for paying off or disputing and settling debts.

# 4

## **Wrapping Up Affairs:**

If the decedent owned a business, the Personal Representative is responsible for ensuring that the business continues operations, and preparing it for transition, either through a preplanned business succession plan or finding a buyer or liquidating the business. If the decedent owned commercial real estate, the Personal Representative will have to step in as the landlord, and continue collecting rents, making repairs, negotiating leases, maintaining the property, etc. The Personal Representative may have to sell assets to raise money or to follow the provisions of the Will.

# 5

## **Estate Administration:**

Working with the attorney and accountant, the Personal Representative will have to assist in the various legal and tax affairs required, such as reviewing, contesting or settling claims against the estate; analyzing and selecting tax planning options; preparing and filing accountings to the court; preparing and filing appropriate tax returns including the decedent's final returns, estate returns and the Personal Representative's fiduciary income tax returns; obtaining federal and state estate tax closing letters or tax waivers; and paying all appropriate taxes due.

# 6

## Estate Distribution:

The Personal Representative, with the help of the attorney, will ensure that distributions are made to the various beneficiaries and heirs as intended in the decedent's Will, including specific bequests of property or cash. In situations without a Will, distributions will be made in accordance with the state's intestacy laws. That may require executing new deeds to transfer real estate; reregistration of securities; execution of appropriate business documents to transfer business interests; and more. Note that there are some assets that will avoid this process because the assets may have been owned with another individual as joint tenants with rights of survivorship, or beneficiaries were named to receive the asset upon the owner's death, such as most life insurance policies and IRA or qualified retirement plan accounts.

# 7

## Closing the Estate Administration Process:

Final distributions of assets will be made, after paying off all final bills, invoices and debts including the fees of the other professionals involved in the proceedings. A final accounting is made to the court showing all of the assets and income collected, expenses and debts paid, distributions made, investments made, and other pertinent information. Final tax returns are prepared and submitted, and formal petition is made to the court closing out the case and discharging the Personal Representative. Federal and state tax authorities are also notified that the fiduciary relationship has been terminated.

## Conclusion:

If you've read through this article, you can tell that there are a lot of things that the Personal Representative is responsible for. It is a very important role but potentially, also a thankless job, and anyone contemplating acting as a Personal Representative should be fully aware of the dedication and all of the responsibilities it requires. For most individuals who accept this challenge, it is also an act of love. Rejecting the role really isn't a choice.

If you want to learn more about being a Personal Representative for the estate of a decedent, contact your Security Mutual Life Insurance advisor today. Your advisor will assemble your team and coordinate with your attorney and tax professional to review your situation and to determine the appropriate plan of action for your situation.

Tax laws are complex and subject to change. The information presented is based on current interpretation of the laws. Neither Security Mutual nor its agents are permitted to provide tax or legal advice.

The information presented is designed to provide general information regarding the subject matter covered. It is not intended to serve as legal, tax or other financial advice related to individual situations, because each person's legal, tax and financial situation is different. Specific advice needs to be tailored to your particular situation. Therefore, please consult with your own attorney, tax professional and/or other advisors regarding your specific situation.



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