



**~ Trust Chat ~
Duties of an Executor
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What is Probate

- When a person dies, Iowa tax law, and in some cases the federal government requires an accounting of an individual's wealth for tax purposes. This procedure, regardless of whether a person dies with or without a will, is called probate and must occur in the District Court of the county where the deceased resided.
- What are the Purposes of probating an estate
 - To develop an inventory of the deceased individuals assets (home, land, etc) and liabilities (debt, loans, etc.)
 - To protect the property in the estate
 - To pay debts and taxes involving the decedent including income, estate and inheritance taxes
 - To determine who is entitled to share in the estate and to make and distribute the assets of estate to the proper parties
- What happens if you die and have a will
 - An estate is opened and your property is distributed according to your will
 - The executor should be named in the will
 - If the executor has already deceased, refuses to serve, or lives out of state, the court may appoint an executor.
- What happens if you die and don't have a will
 - If you die without a will then your property gets distributed according to state law, called intestacy. If you have a surviving spouse then he or she gets a portion depending on your children's lineage to the surviving spouse. If there is a remaining portion left then it gets distributed to your children and continues to your relatives.
 - The court, upon petition of an authorized person (usually a relative), will name an administrator. An administrator is the person who takes charge of the deceased person's estate.
 - All of the assets and liabilities of the deceased will be under the responsibility of the administrator to handle and dispose of them by sale, distribution, and will need to pay all deceased taxes and estate taxes.

Why should I care

- It is your money and you should decide how it gets distributed
- It affects your family and loved ones
- A plan is better than no plan

Who do I should select to serve as my Executor

- You should name: your spouse, family, friend, attorney, accountant, or bank
- You should name one or more successor executors in case your original choice cannot serve or is not willing to serve
- Typically married couples name each other as the first choice for executor.
- Your second, third, and fourth choices could be your parents or siblings, an adult child, or even a close personal friend.
- It is best to have at least one successor executor who is approximately your age or younger so that there is a good chance he or she will survive you.
- Although it is usually easier to have an executor who lives in or near the same geographic area where you live, it is not a requirement.
- Many wills provide that executors are entitled to compensation from the estate for their efforts, plus reimbursement of any expenses, including the fees of any professional hired to assist them.

Duties of an Executor or Administrator

- First Step - locate and file the deceased's will
 - Main task
 - Locate and preserve the assets of an estate - sometimes the decedent has a detailed list of his or her assets
 - Payment of claims and debts
 - Payment of taxes and distributes assets according to the will
 - Refusal to be an Executor
 - A person named as an executor may refuse to serve as an executor, however, once named an executor, one needs to get Court permission to no longer serve as the executor.
 - Once refusal is accepted the initial executor still has responsibilities to fulfill
 - Personal Risk
 - The executor or administrator may incur personal liability by misinterpreting the law. This is a reason why it is important to have good advice from your lawyer.
 - Authority
 - The Court must approve you to act as an executor or administrator.
 - Your authority to act starts with the court issuing the letters of appointment. This is your key to act on behalf of the estate.
 - Title
 - Will: When a person dies, title to all of his or her real estate and personal property passes to those named in the will.

- No Will: Property goes to those as set forth by the law.
- Certain properties, such as life insurance or 401K's, do not get passed through the will or inheritance. While the executor or administrator may not have possession of this property, ordinarily he or she is subject to the requirement to collect the taxes, which result from the passing of this property.

Generally, what are the duties of an Executor or Administrator

- Opening the Estate
 - The executor or administrator should take possession of the deceased individual's property of the estate and distribute it according to the will's intent. They must take an oath, swear that you will uphold the law and fulfill the duties of your office. Executors and Administrators are an impartial representative and should be completely fair and open in dealing with everyone.
- Duties
 - Locate tax returns
 - Keep real estate and personal property insured
 - Receive rent and payment due to collect interest, dividends, and other income
 - Collect on debts, claims, and notes
 - Keep accurate records of expenses
 - Get personal information of all distributees or heirs
 - Litigate/settle any lawsuits or claims which the deceased had an interest
 - Keep estate property invested until distributed
 - Determine and pay gift taxes, inheritance taxes, estate taxes...etc
 - Pay valid claims
 - Distribute remaining assets to the proper heirs/beneficiaries per the will
- Duties as to Property
 - Bond: The amount of the bond is based on an estimate of the value of the estate and the income of the estate. This may be required by the Court. Some wills may exempt or waive the executor from posting bond.
 - Once all property is accounted for, the law requires a written true general inventory be made and filed. This must be done within 90 days after you are authorized by the Court and are appointed executor of the estate.
 - Statement of inventory needs to include:
 - Personal information of decedent (age, social security...etc)
 - Date of death
 - Whether the decedent died with or without a will
 - Information about the surviving spouse, if it applies
 - Information about the beneficiaries or heirs
 - Inventory of real property in or out of the State of Iowa which will include the legal description and value
 - Inventory of any personal property

- Types of property to inventory
 - The below properties are listed on separate forms called schedules. Each schedule has a letter associated with it. So Schedule A should list real property...etc.
 - Real property (Land)
 - Stocks and Bonds
 - Mortgages, notes, and cash
 - Personal Insurance
 - Jointly owned property with surviving spouse along with jointly owned property with other person
 - Miscellaneous property: Automobiles/trucks, household furniture, jewelry, farm machinery, farm livestock and business inventory
 - Transfers during life
 - Annuities
 - Funeral expenses
 - Debts and liens
 - Gifts
 - Gifts or other transfers of property made by the deceased may involve tax problems. The Executor should determine the date of the gift and to whom, if and when it was reported and whether any tax was paid.
 - Claims
 - Must give a notice to creditors to file claims
 - Notice will inform creditors they must file their claims within four months after the second publication of the notice of probate
 - Sale of Property
 - Real Estate: The will indicates whether you can sell the property (e.g., power to sell). If it does not, a court order is required to transact the sale.
 - Personal Property: Perishable items need to be sold at once, while non-perishable items may be sold with a court order.
- Timing
 - Every estate is different; therefore, it is difficult to predict the time it will take to complete. Usually, the process is complete in 9 to 12 months, or longer.
 - State Law requires the executor or administrator to file the final account, settlements, and distributions of the estate within 3 years after the second publication of notice to creditors - can be extended if court ordered.
 - Each estate has certain reporting times for income and other taxes. These timetables should be ascertained from your lawyer at an early date so that planning can be made for the best tax consequences for the estate.
- Settlement and Closing of the Estate
 - Administration expenses: Court costs, your own and attorney's fees – paid first
 - Claims: Do not settle any claims until your lawyer approves them
 - Distribution: Distributions are made according to the will.
 - Discharge: A discharge order is usually signed after a final report is filed with the clerk of court

Benefits of having a family member or friend as an Executor

- Cost Efficient
 - Typically you don't have to pay a family member to serve as executor. However, you should be aware that if your family member hires a financial advisor that fee might be the same as the corporate executor fee.
 - Also, the family member may not be able to get the same returns on the investment that a professional should be able to.
- Understands the Family Dynamics
 - An individual executor may have a better understanding of family dynamics than the trust officer.

What are the benefits of having a bank as an Executor

- Protection
 - Banks are regulated by state and federal agencies
 - No self gifting
 - Banks carry insurance
- Objectivity
 - Neutral 3rd party
 - Banks can serve a buffer for family members that do not get along
 - They follow trust instructions objectively
 - They are unbiased and not swayed by emotions or personal agendas
- Experience
 - Officers that regularly handle these matters and are familiar with Iowa tax laws
 - Banks have avenues of investing that are not open to individuals
 - Banks are capable of handling large accounts
 - You will have access to professionals
- Continuity
 - Corporate trustees live forever and are solid
 - Ease of burden, work, and help with peace of mind

What will the bank do for me

- Initial relationship and assessment
 - The trust officer will look at the terms of the trust agreement and will
 - They'll meet with the grantor or beneficiary to determine income and needs
- Managing the Trust
 - They manage the property and investments as stipulated in the will
 - Banks will set the investment strategy and will make changes as needed
- Taxes
 - Preparation of fiduciary income tax returns for trust
 - They will provide data for the beneficiaries return
- Accounting
 - The bank will set up the accounting, and make sure it is accurate
- Obligations to the beneficiaries
 - Delivery of regular accounting statements that detail all receipts and disbursements of trust to beneficiaries
 - Pays for education and medical needs of beneficiaries
- Distribution
 - Distribution of income and principal to beneficiaries as stipulated by the trust agreement
 - The bank will determine the proper portion to give each beneficiary and will determine the time to distribute

How do you choose a bank as an executor

- You can simply name a bank in your will