The Tough Task of Selecting an Executor

YOUR
MONEY
MATTERS

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Do you know someone with unquestionable ethics, who's financially savvy, a good record-keeper and sensitive to others' emotional needs?

Quick, get that person to agree to be executor of your estate.

After you've spent a lifetime accumulating your fortune through hard work and careful investing, the executor is the one who is supposed to make sure assets are distributed in the way that you specify in your will.

But the qualifications of the executor you choose can make a big difference in how much is distributed, to whom and how fast. And it can affect family relationships for years to come.

Unfortunately, many people simply name their spouse or oldest child and forget about it. "The biggest mistake [people make] is that they don't give it enough thought," said David W. Belin, a Des Moines, Iowa, estate lawyer.

The job is a lot more work than many people realize. An executor is charged with assembling and valuing the decedent's assets, filing income-tax and estate and inheritance-tax returns and paying the taxes, distributing assets to heirs and accounting for everything that's done. There may be numerous meetings with attorneys and accountants.

There's also a strong emotional component. The executor has to deal with grieving family members soon after a death; the relationship could continue for as long as two or three years. Personal items, such as jewelry and household effects, have to be distributed. There may be conflicts among family members to resolve, particularly if there's a second spouse or if assets aren't divided equally among several children.

It's the financial aspects of the job, however, that are usually the most important, estate-planning professionals agree. "It's very much of a fiduciary responsibility," said Timothy Chase, a financial planner with Baltimore accountants Walpert, Smullian & Blumenthal.

While the estate is open, the executor has to keep funds invested. Some assets may need to be sold to pay taxes or for other purposes, and the executor will have to decide which ones and when. There may be a small business to be managed or liquidated. It can be difficult to value stock in family-owned or closely held companies.

Some estate specialists suggest turning over the job to a bank trust department or other professional, especially for a large complicated estate with trusts and a business to value. Richard Langer, an estate lawyer in Madison, Wisconsin, said it doesn't necessarily cost more to use a pro because executors' fees are generally set by state law.

Typically, executors' fees amount to between 2% and 5% of an estate, although it's sometimes possible to negotiate lower fees. Even children of the deceased often take the full fee when they see the amount of work involved in settling an estate, Mr. Langer said.

Naming a professional executor also takes the burden off the family and removes the potential for conflict that can arise when the executor is also one of the beneficiaries, he added.

Other estate specialists say, however, that banks can be impersonal and may not always have the time that some families require. A solution may be co-executors, a bank trust department and a family member. "That way you get the expertise of a bank and the personal input of a family member," said Tamara Telesko, a vice president in the U.S. private banking group at New York's Chase Manhattan Bank.

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If a significant portion of the estate is going into a trust, financial advisers say, it may be helpful for the executor and trustee to be the same individual or entity. The trustee then knows that the necessary paperwork has been done for the transfer of assets and already has a relationship with the family or other beneficiaries.

But people who decide to name an executor who will also be a trustee should exercise great care, said Judy Walsh, national director for executive financial planning at Deloitte & Touche. "Look at their [money] management record," she advised. "Then sit down with the trust officer and . . . see how the chemistry works."

For smaller estates, a corporate executor may be unnecessary, many financial advisers say. Indeed, bank trust departments often won't take small estates. In such cases, a family member or trusted friend may be a fine choice - so long as the individual has the qualifications and time for the job. Certainly, if a spouse or adult child is sole beneficiary of an estate, there's usually no reason to deplete assets for executor fees, estate specialists say.

There are other things to watch out for. The executor can be held personally liable if, for example, assets are depleted without leaving sufficient amounts to pay taxes. If the executor lives in another state, there's the cost of travel and long-distance telephone calls to consider, and some states require an out-of-state resident to be bonded or otherwise insured.

Some grieving spouses may be overwhelmed by the responsibility, while others find it therapeutic to be in control. Giving one adult sibling control over others can cause resentment, but professionals caution against naming several children as co-executors unless there's a mechanism for resolving disputes written into the will. "A lot depends on the family situation," said Mr. Chase, the Baltimore planner. "People have to know their families."

Worse than naming the wrong executor is naming no one at all, said Judy Walsh of Deloitte & Touche. Most estates are closed "within nine months to two years," she said. "You can live with a toothache for that long." If there's no executor, often because there's no will, she said, the courts will name one, which is usually more costly and "may not satisfy the family at all."

The comments set out above with respect to selecting an executor apply equally to selecting a trustee who will act under a trust that you create. A trustee will, however, typically be exercising his or her duties and responsibilities over a much longer period of time. In addition, a trustee will ordinarily be called upon to exercise discretionary judgement in connection with periodic distributions which (i) may have to be made for the benefit of a beneficiary, or (ii) which a beneficiary may request from the trustee. While a properly drafted trust instrument will set forth "distribution standards" that a trustee looks to in determining the appropriateness of such distributions, a beneficiary may not understand or agree with the restrictions which a trust places on the availability of income and principal to that beneficiary. The trustee, then, must have the personal skills and attributes which will be necessary to deal with such beneficiaries over a long period of time.

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