

THE ROLE AND RESPONSIBILITY OF EXECUTORS

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While discussing the importance of preparing a will in the last issue of *Letter of the Law*, we hinted at the duties of an executor. Selecting an executor/trustee to manage your estate should be undertaken carefully; the executor's role can be burdensome, time-consuming and overwhelming. The more complex an estate is, the more tasks are required of an executor. For example, if minor children are beneficiaries under the estate, the executor may have to act as trustee of their inheritances until they reach at least the age of majority (19 years old in British Columbia) and often longer. Depending on the will's terms, this could take decades. In most cases the obligations that an executor assumes can be quite lengthy, although prior planning between spouses or parents and adult children can ease the burden. The following is a summary list of some key responsibilities:

- Making funeral arrangements.
- Locating the will. If the deceased has not kept a will in an obvious location, a search can be performed through the British Columbia Vital Statistics Agency's Wills Registry. Even if an executor 'knows' there is no will, this must be done.
- Safeguarding the deceased's assets. This involves locking up the deceased's residence after locating and safekeeping cash, insurance policies, securities, vehicles, valuables and personal property. It is also necessary to cancel credit cards.
- Making or arranging for an inventory of the deceased's personal assets.
- Reviewing the insurance on the deceased's assets (including household and vehicle insurance) to ensure that coverage will continue.
- Contacting the deceased's financial institutions to ensure outstanding cheques (e.g. pensions, dividends, interest or salary) are properly deposited and that mortgage payments, assuming they are not life-insured, are kept up to date.
- Applying for Canada Pension Plan Death Benefits.

- Notifying all the beneficiaries and heirs at law of the estate.
- Compiling a list of the deceased's assets and liabilities.
- Arranging the preparation and filing of the deceased's final tax returns.
- Liquidating (if necessary) and distributing the assets of the estate to the beneficiaries.

Before a deceased's heirs can receive any assets it is usually necessary to make an application to a court to prove that a will is valid. This is known as the process of probating a will. If an executor is also the main beneficiary under a will, and the estate involves only assets held jointly (such as a house or bank account), a lawyer may not be needed. However, an executor's responsibilities can be burdensome and involve considerable paperwork, so it is usually a good idea to seek legal help. A competent estate lawyer can perform many of the executor's duties and the fees are usually payable directly from the estate. In addition, tax filing requirements can be complex so it is often a good idea to retain an accountant to assist with the preparation of the deceased's final tax returns.

It is extremely important to choose a knowledgeable, trustworthy and experienced executor if an estate is at all complicated. For example, if the assets of an estate include a business, it is not advisable to have an executor running a business that he or she does not know much about. Business experience would be useful even if the executor were only arranging for its sale. The selection of an executor is extremely important, both to ensure that your wishes are carried out and to know that you will not be burdening an unqualified person with the task. Some personal attributes that you should consider when selecting your executor are: integrity, prudence, good judgment, sophistication concerning financial matters (and business affairs if your estate contains them), and fairness. In addition, you should avoid appointing a known procrastinator, however likeable. Finally, if your estate is located in British Columbia, it is practical to have an executor who also lives in the province.