

## **GUIDE TO EXECUTORS**

An executor is the person responsible for settling a deceased person's estate. As executor, your duties include inventorying, appraising and distributing assets; paying taxes; and settling debts owed by the deceased. You are legally obligated to act in the interests of the deceased, following the wishes expressed in that person's will. If all this sounds a bit overwhelming, keep in mind that you can hire professional help—for example, an attorney to help with the probate process or an accountant to file taxes. This pamphlet provides an overview of the executor's role.

### **Who Can Be an Executor?**

Any U.S. citizen over the age of 18 who has not been convicted of a felony can be named the executor of a will. Some people choose a lawyer, accountant or financial consultant because of his or her expertise. Others choose to appoint a spouse, adult child, relative or friend, especially if the estate is small. Generally, a family member or friend expects little or no pay for settling the estate and is anxious to get things settled quickly and smoothly.

Being an executor can be a lot of work. You have to follow up on many details and may also be called upon to help defend the terms of the will against squabbling heirs or unwarranted claims by outside parties. You also need to be able to act quickly in order to preserve the value of the estate. For example, taxes must be filed in a timely manner to avoid penalties. Because of the many responsibilities involved, it is wise to ask the person being named in a will if he or she is willing to serve as executor. If you have been named executor in someone's will but are unwilling or unable to serve, you need to file a declination, a document declining your designation as executor, with the court. The contingent executor named in the will then steps in. If no contingent executor is named, the court will appoint one.

### **Responsibilities of an Executor**

As executor, your first duty is to initiate probate, the formal process of proving the authenticity of the deceased person's will and confirming your assignment as executor. You will need to file an application to appear before the probate court. The application form is available from the clerk of the probate court (found in the government listings of your local telephone directory). To help you perform your duties, you may want to consult an attorney. An attorney's fees are chargeable to the estate as expenses of administration. Next, you need to notify all parties named as beneficiaries that you have applied to the court to process the will.

When you appear in probate court you will need copies of the will and death certificate. You should also be prepared to pay court costs, which are chargeable to the estate. The job of the probate court is to decide the validity of the will, generally a routine affair. However, this is also the time when parties may challenge or contest the will. A person who challenges a will, or part of a will, must file an objection with the court within a specified amount of time (check your state laws). Challenges to wills can be time-consuming and costly to the estate.

Once the will is determined to be valid by the probate court, you may begin to pay taxes and other claims against the estate and distribute assets to the beneficiaries. If the will is found to be invalid, the probate court will order that creditors and taxes be paid. Then the remainder of the estate will be distributed in accordance with state law. Your last step is to finalize the estate by filing papers with the probate court. This usually involves providing the court with copies of notices to concerned parties, tax returns and bills paid. The executor must also provide evidence of distribution of the remaining assets, such as signed receipts from the beneficiaries. When the court recognizes the completion of the probate process, you are released from further responsibility as executor.

### **Costs Incurred by the Executor**

Generally, an estate is responsible for paying the executor a fee. This fee may be specified in the will, or it may be determined by state regulation. The executor's fee may be waived. If the executor is an attorney, the law in most states prevents him or her from collecting both an executor's fee and an attorney's fee for legal advice on the estate. Generally, an executor is entitled to be reimbursed from the proceeds of the estate for expenses incurred in settling the estate. For example, if you live in California and are named executor of an estate in New York, the estate is liable for your commuting costs.

### **The Executor's Checklist**

Settling an estate, even a simple one, involves plenty of loose ends and details. The following list will give you an idea of the many things you may need to do as executor. Use it as a guide, adding or deleting items as needed.

- Locate the will
- Obtain a lawyer, if necessary
- Apply to appear before the probate court
- Notify beneficiaries named in the will
- Arrange for publication of notice to creditors and mail a notice to each known creditor
- Send notices of the persons death to the post office, utilities, banks and credit card companies
- Inventory all assets and have them appraised, if necessary
- Collect debts owed to the estate
- Check with deceased's employer for unpaid salary, insurance and other employee benefits
- File for Social Security, civil service or veteran benefits
- File for life insurance and other benefits
- File city, state and/or federal tax returns
- File state death and federal estate tax returns
- Pay valid claims against the estate
- Distribute assets and obtain receipts from beneficiaries
- File papers to finalize the estate

If you have questions, contact the Fort Bliss Legal Assistance Office at (915) 568-7141/7150 for an appointment to speak with an attorney.