

# Stiller Law Offices

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1/1/2016

Client Article

## **Duties of an Executor**

As an estate planning and administration professional, I am often asked questions about the Executor of the Estate. An Executor is the person named in a Will to be responsible for settling a deceased person's probate Estate. This is general information regarding some of the more common duties and responsibilities that confront an Executor during the probate process. These same duties are performed by an Administrator when a person passes away without a valid Will. This brief list is not intended to be either exhaustive or technical.

The probate process transfers assets owned by the decedent to those persons entitled to the assets under the Last Will and Testament or under the laws of inheritance. As Executor, you have several duties, you have to follow up on many details, and you must always act in the interests of the beneficiaries, following the decedent's wishes as expressed in his or her Will. The specific details of an Executor's duties vary

from state to state, and many of the steps that an Executor must take will depend on the provisions of the decedent's Will and the composition of the assets comprising the estate. The same types of duties are usually required whether one is appointed Executor, Administrator or Personal Representative. If all this sounds a bit overwhelming, keep in mind that you can hire professional help.

## *You Should Know*



The law of the state and county that has jurisdiction regarding the Estate administration provides the rules that apply to Estate administration in that locale. All Executors must follow both the applicable statutes and the terms of the Last Will and Testament. All Executors must fully review the Will document and should seek professional assistance if unsure of the meaning of a particular provision or their responsibilities under the law.

*Perhaps the most well-known quote capturing the significance of the fiduciary standard is from Judge Benjamin Cardozo's opinion in the Meinhard v. Salmon case, rendered in 1928: "Many forms of conduct permissible in a workaday world for those acting at arm's length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not honesty alone but the punctilio of an honor the most sensitive is then the standard of behavior."*

## Duties of an Executor

### An Executor:

- ⊙ Locates and studies the Will and arranges for it to be probated. This involves filing the necessary papers in the appropriate Probate Court, generally the Court in the county in which the decedent resided at the time of his or her passing.
- ⊙ Receives court authority to act. Once that occurs, the Executor collects, inventories and takes custody of all assets. If the decedent owned assets in another state, the appointment of an ancillary Executor in that state may be necessary.
- ⊙ Reviews decedent's financial records and safeguards all assets. The Executor must inventory all assets and determine their value.
- ⊙ Administers the estate. This activity is controlled by the provisions of the Will and by state law. Because an Executor is in a fiduciary

position, he has a duty of care to impartially administer the Estate for the sole benefit of the Estate's beneficiaries. He must keep accurate records of all receipts coming into the Estate, as well as collecting and paying all appropriate expenses, such as disbursements for preferred claims, for example funeral bills and administration expenses, and for other valid creditor claims.

- ⊙ Considers non-probate assets. Non-probate assets do not pass under the terms of a Will, but they are important considerations in settling the Estate.
- ⊙ Is responsible for all tax returns, including federal and state income tax returns for both the decedent and the Estate, and for federal and state estate and/or gift tax returns.
- ⊙ Is entitled to compensation for his services to the Estate, which is calculated according to a statutory formula based upon

the value of the assets comprising the Estate. Please note that any amounts received as Executor's fees are considered taxable income to the Executor.

- ⊙ Distributes the Estate assets to the appropriate beneficiaries, including establishing and distributing to any Testamentary Trust created by the decedent's Will or to any other trust as directed by the decedent. Once all assets are distributed to the proper beneficiaries, the Executor will file the appropriate papers to finalize and close the Estate. Executors are currently expected to complete the administration of an Estate within six months of being appointed Executor unless some compelling reason exists to continue the administration, such as litigation involving the estate, the need for filing of estate tax returns, etc.

If you have questions, it is important to consult a professional regarding the duties applicable to your specific situation. At Stiller Law Offices we are accessible and are always available to assist you with resolution of your estate administration issues.

## ***Frequently Asked Questions***

### **What is probate and why is it necessary?**

Probate is the legal proceeding to administer certain kinds of property (called probate property) owned by someone who has died (the decedent), and to ensure that claims, expenses and taxes are properly paid, and that the remaining estate is distributed to those entitled to receive it under the decedent's Will or pursuant to Ohio law. Probate property is all property titled in the decedent's name alone. A probate proceeding takes place in the probate court of the county in which the decedent lived at the time of his or her passing. If the decedent also owned real estate in another state, additional proceedings may be necessary in that state. Probate is necessary to give the Executor or Administrator the legal authority to deal with the decedent's probate assets. The Executor or Administrator has the authority and duty to take control of and safeguard the assets of the decedent's estate. Probate then provides a process for the payment of outstanding debts, taxes and the expenses of administration, and for the distribution of the remainder of the estate to the beneficiaries and/or heirs. Probating an estate requires the appointment of a person to conduct the administration of the estate. If there is a Will, this person usually is named in the Will and is called an Executor. If there is no Will or no person is named in the Will, this person is appointed by the probate court and is called an Administrator. The Executor or Administrator may be an individual, a bank or a trust company. When appointing an Administrator of the estate, Ohio law requires that the court appoint certain persons in order of priority; the first priority is to the surviving spouse of the decedent, and if none, or if the spouse declines, the court will appoint one of the next of kin of the decedent. In any event, the Administrator must be an Ohio resident. If there is no surviving spouse or next of kin resident of the state, or if the court finds such persons to be unsuitable, some other suitable person will be appointed as Administrator.

Before the court issues official letters of appointment naming an Administrator, the appointed person must sign an acceptance statement that spells out his or her duties and acknowledges that the court can fine or remove an Administrator for failure to perform those duties faithfully. The Administrator must also post a bond (paid from the decedent's estate) to cover potential losses that the estate might suffer through error or mishandling of assets during the administration process.

The probate court judge and support staff supervise the work of the Executor or Administrator. These actions may require the preparation and filing of numerous legal documents, the provision of notices, hearings in court, an appraisal of the assets of the estate, an inventory of the assets, completion of final income tax returns and possibly gift and estate tax returns, an accounting of funds, final transfer of all assets to beneficiaries, termination of the probate proceeding, and discharge of the Executor or Administrator by the probate court. Because of the complexity of these procedures, the assistance of an attorney usually is needed.

If the total value of all property in the decedent's individual name is below certain statutory limits, currently \$35,000 or less, the estate can be relieved from some of these administrative requirements. If the decedent's spouse is entitled to receive all of the estate's assets, the amount that can be relieved from formal administration is increased to \$100,000.

### **How much does probate cost?**

The costs assessed by the probate court are based on a schedule of charges established by law for each type of document filed in the court. Costs typically are about \$300. Attorney fees charged for handling matters of the estate may have to be approved by the court and typically are based on a flat fee, an hourly rate or a percentage as agreed to by the Executor and/or beneficiaries. The Executor or Administrator is paid a fee set by Ohio law which is based on a percentage of the value of the estate assets being administered.

### **How long does probate take?**

A small estate that does not require the filing of an Ohio estate tax return and has no creditor issues can often be settled within six months of the appointment of the Executor or Administrator. However, if an Ohio or a federal estate tax return is required, the administration of the estate can last more than a year because the estate taxes are not due until nine months after the decedent's death. If there is an audit of an estate tax return, the administration can take an additional year or more. An Executor or Administrator cannot safely distribute all of the estate assets until released from personal liability for estate taxes. An administration involving extraordinary circumstances such as a contested Will or complicated tax litigation may take several years to complete. Claims against the estate may be made up to six months from the date of death. However, in many cases, distributions of most or all estate assets do not necessarily have to wait until all probate matters have been completed.

### **What does it mean when someone dies "intestate"?**

Dying intestate simply means that a person died without a Will to spell out how his or her property is to be distributed. If a person dies with a Will, the powers granted to the Executor in the Will enable the Executor to perform tasks without the permission of the Court, while an Administrator must request permission of the Court to perform tasks such as to transfer tangible personal property (furniture), to transfer motor vehicles or to sell real estate. Some duties of an Administrator are similar to those of the Executor of a Will.

The basic duties of both an Administrator and an Executor (the Estate's fiduciary) are:

- 1. File an Inventory and Appraisal.** The fiduciary must identify and determine the fair market value of all financial assets and property that were owned by the decedent at the time of death.\* The fiduciary must file an inventory listing all of the decedent's probate assets and their date-of-death values with the probate court within three months of the fiduciary's appointment, unless an extension of time is granted.

\*(Please note: Most estates include what are known as "non-probate assets", which generally do not have to be included in the inventory filed with the court. Non-probate assets are assets that legally pass from a decedent to a named beneficiary or to a co-owner at the time of death, without having to go through the probate process. Non-probate assets include items like insurance policies, IRA's and annuities that are payable to a named beneficiary; and a home, car or bank or similar account that the decedent owned jointly with rights of survivorship with another person or persons. In many cases, the bulk of a decedent's assets may be non-probate assets. The fiduciary must identify non-probate assets for tax purposes, but

these assets are not otherwise included in the estate for which the fiduciary is responsible. If the value of an asset is “readily ascertainable” (for example, shares of stock in a publicly traded company or the balance in a bank account), then no professional appraisal is required; however, items such as jewelry, art objects, antiques, real estate and any other possessions whose value cannot be readily established must be appraised by a qualified person.

**2. Collect the assets.** The fiduciary must collect all assets of the decedent. This is very important (especially to prospective heirs) because it is these assets that will be distributed to the heirs after debts and taxes have been paid. Complications can arise in this process if assets legally owned by a decedent are in the possession of someone else at the time of death, or if property belonging to the decedent has been concealed or misappropriated by a third party. Sometimes collecting assets may require the fiduciary to follow through on a lawsuit in which the decedent was involved at the time of death, or to file a lawsuit to complete a legal claim the decedent had not fully asserted while alive. For example, if the deceased was killed in an accident it may be necessary to file a suit to recover damages for wrongful death.

**3. Pay debts and expenses.** Creditors (people to whom the decedent, or his or her estate, owe money) have six months from the date of death to present their claims against the estate. In most cases, any claim not submitted within six months is barred forever. Claims must be in writing and sent directly to the fiduciary or mailed to the decedent’s address, and must be received by the fiduciary within six months. In addition to ordinary bills the decedent owed at the time of death, other debts typically include expenses to keep up property; local, state and federal taxes; hospital and funeral expenses; and expenses of administration including probate court costs, bond premiums and fees charged by appraisers, attorneys and the fiduciary.

Even after accepting a claim as valid, the fiduciary must be certain there will be sufficient assets to pay all claims, including those not yet presented. Certain debts have priority. Generally, costs and expenses of administering the estate, funeral expenses and taxes must be paid first. If there are sufficient cash assets in the estate to pay debts, they will be paid out of cash. If there is not enough cash, then estate property will be sold (personal property first and then real estate if necessary) to raise the cash needed. If the total assets in an estate are not sufficient to pay all of the valid debts, claimants must be paid according to a priority schedule established by law.

**4. File Final Account and distribute remaining assets.** Within six months after his or her appointment, every Administrator of an estate is required to file a report called a final and distributive account with the probate court. In certain circumstances, such as when an Ohio or federal estate tax return is due, an account is due 13 months after appointment and once a year thereafter. This account must include an itemized statement of all receipts, disbursements and distributions made by the Administrator during the reporting period. When the Administrator files the final and distributive account with the court, the Administrator is released from his or her duties. When all debts, taxes, costs and expenses of the estate have been paid, the fiduciary must distribute the balance of the estate to the decedent’s heirs according to a strict formula spelled out in Ohio’s statute of descent and distribution. Because an Administrator may be held personally liable for an error or excess distribution to



### **What are characteristics of an effective Administrator or Executor?**

One of the keys to being an effective Administrator is to be highly organized. In the administration of a decedent's estate, it is essential to keep complete, accurate records and to carry out all procedures required by the probate court in an orderly manner. Also, keeping a positive relationship with the heirs is helpful. This is especially true when the Administrator is one of several surviving relatives of the decedent. An Administrator is likely to encounter fewer problems and complications if he or she keeps all the decedent's heirs informed of what is going on and treats them as equals.

### **Who should assist the Administrator or Executor?**

Serving as an Administrator involves serious legal responsibilities, and can expose you to financial liability if claims and assets are not properly handled. If you are appointed to serve as Administrator of an estate, do not rely on casual advice from friends and family members regarding your duties to the court and the decedent's heirs. A lawyer can provide you with trained legal advice and professional judgment regarding the complicated laws involved, to help you avoid pitfalls and make the proper decisions.

*Contact us for more information about the topics discussed in this article. This information is provided as a service to our clients and is not intended to be and does not constitute legal advice.*

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