

Understanding the Role of an Estate Representative and Choosing the Right Individual for your Estate Plan



By [Shawn P. Byrns](#)

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Once you have taken the essential step in formulating your estate plan, you must name an executor of your Will. Whom should you designate for this significant role, and what is expected of them?

The Role of an Executor

An executor is the person named in your Will who will manage all the assets owned by you at the time of your death. The executor is a fiduciary of your estate and must act in your best interest while collecting, managing, preserving, and ultimately distributing your assets.

As a fiduciary of your estate, the executor is bound by his or her duties of loyalty, good faith, care, and obedience. As executor, your representative must avoid engaging in self-dealing, adhere to the directives of your Will and the court, and be prudent in protecting the interests of the beneficiaries.

A common misunderstanding is that an executor is in charge of deciding who will benefit from your assets. The executor must carry out your Will's instructions and act in accordance with your directives. Consider your Will the "playbook" under which the executor must operate.

Duties of an Executor

Probate the Estate:

The executor will need to file the original Will in the probate court in the county in which the decedent was domiciled. Most importantly, the original Will must be located as only the original copy can be offered and admitted to probate. Under extraordinary circumstances, a copy of the Will can be admitted, but locating the original is essential to starting this process.

*Advice: Make sure you are aware of your original Will's location. In most cases, the drafting attorney's office will hold the original copy in a fireproof safe. Many clients prefer to keep the original themselves. In New York, originals are often stored in the county clerk's office (search for your original Will [here](#)).

Prior to Appointment:

- **Identify Assets:** The executor is responsible for finding, gathering, securing, and maintaining the decedent's assets. The executor will need to know how to find your bank accounts, investments, real estate, and personal property. During this process, the executor must also identify any outstanding debts and liabilities.
- **Safeguarding Assets:** Prior to the issuance of Letters Testamentary from the appropriate court, executors have a duty pursuant to New York Estates, Powers, and Trusts Law, Section 11-1.3, to take any such action necessary to preserve the assets of the estate. For example, if an individual dies owning their primary residence, the executor will be responsible for ensuring the property is maintained, including, but not limited to, paying all utility bills, maintaining property insurance, and preparing the property for the winter season.
- **Notify the Proper Institutions:** To ensure no further transactions or payments are made following the decedent's passing, the executor must notify banks, credit card companies, and government agencies of the decedent's death. Social Security Administration, life insurance companies, banks, and credit card companies are just some examples of institutions that should be notified.

Appointment of Executor:

Once Letters Testamentary are issued, the executor has the power to take action as the representative of the estate. In doing so, the executor must:

- **Open an Estate Bank Account:** A bank account in the estate's name is required when transferring any monies or liquid assets of the decedent. The assets will be consolidated into the estate bank account to be held for payment of any administrative expenses. These costs can include funeral expenses, ongoing mortgage payments, home insurance, and attorneys' fees. Once these fees are paid, the remaining monies will be used to pay the defined beneficiaries or next-of-kin as defined by the terms of the Will.
- **Paying Off Creditors:** Generally, the decedent's debts and liabilities must be paid before any beneficiary can receive their inheritance. Valid creditors must be paid following the payment of any administrative fees as described above.

- **Managing Estate Assets:** The executor is responsible for understanding the value and nature of the decedent's property to ensure fair distribution of the assets. For example, the executor may need to liquidate the decedent's property to cover estate-related expenses and provide monies for distribution. Once the assets are settled, distribution can occur.
- **Distributing the Assets:** Once the administrative fees and valid debts are paid, the remaining amount is what is available for distribution to the beneficiaries. The executor must identify and locate the named beneficiaries and inform them of the amount remaining and the expenses incurred getting to that amount. If satisfied with the executor's dealings, the beneficiaries must sign off on their bequest.

The above list is not exhaustive. Executors must also consider filing the decedent's final income tax return, dealing with a business owned by the decedent, or contesting creditor claims against the estate. Every probate is different, and each executor is tasked with various duties. With this in mind, how do you determine the right person for this role?

Choosing Your Executor

Given the responsibilities and obligations of an executor, as detailed above, choosing the right person to handle your estate is crucial. There are no restrictions on who can be chosen, but it is important to choose someone who you believe to be honest, responsible, and organized. When making this choice, you should consider:

- **Family Relations:** Oftentimes, your next-of-kin is in the best position to serve as they are likely aware of the nature and location of your assets. But consider the impact your selection will have on your family. For example, if your next-of-kin is estranged, the appointment of one child over another may promote conflict in the administration of the estate.
- **Professional Experience:** If you have a family member or close friend who has experience with probating estate or has financial experience, it may be wise to appoint them to manage your estate to alleviate the learning curve for an inexperienced choice.
- **Geographic Location:** Appointing a representative who resides out of state may create difficulties and undue delays for the administration as the state domicile of the decedent is where the probate will occur. Further, if the decedent owns the property, managing and selling the property can be difficult if the executor is operating from a distance.
- **Age:** You should consider an individual whom you expect will outlive you. You'll also want to consider the age and maturity of the individual as they will be required to handle the responsibilities described above.
- **Corporate Fiduciary:** In the event your options are limited, the use of a third-party corporate fiduciary is available. Such fiduciary would require compensation, but an unbiased third-party decision maker can alleviate potential issues associated with the administration and these fiduciaries are trained to handle the various complexities of managing estates.

Regardless of who is chosen, an executor is, if needed, required to enlist the assistance of necessary professionals to assist such as attorneys, realtors, accountants, and wealth management professionals. This guidance in conjunction with the directives of your Will ensures the proper administration of your estate.

In sum, creating an estate plan that fits your needs is the foundation for a straightforward probate of your estate. With a plan in place and the right individuals selected to represent you, you can rest assured your wishes will be carried out.

If you or someone you know has questions pertaining to the creation of or adjustments to an estate plan, please contact one of our [Trust and Estates Practice Team](#) members for more information.

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