PacificCPE

COURSE
40751A

Executor Essentials: Roles, Decisions, and First Steps

Starting the executor journey can feel overwhelming, especially in the immediate aftermath of a loved one's death. This course lays the groundwork by introducing the executor role, helping professionals understand what accepting the responsibility actually means, and walking through the critical tasks that must be handled in the first week. CPAs and tax advisors who counsel estate clients will gain practical context for the early-stage decisions executors face before probate and tax matters come into full focus.

CREDIT HOURS 2 | FIELD OF STUDY BUSINESS | EXAM QUESTIONS 10

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Assignment

- Study the full course materials included here.
- Complete the review questions after each chapter.
- Answer 10 final exam questions.
- Final exam is scored immediately, 70% or better passes.
- Certificate of completion is available in your account.
- Failed exams can be retaken free of charge.

Course Objectives

- Recall the duties of an executor.
- Recognize who is allowed to serve as an executor.
- Recognize the burial benefits available to eligible U.S. veterans.

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Chapter 1: OVERVIEW

Chapter Objective

After completing this chapter, you should be able to:

- Recall the duties of an executor.

What does an executor do, exactly? If you're like many people, you probably have only a vague idea. Essentially, the executor's job is to carry out the deceased person's wishes—making sure that assets go to the people or organizations the deceased person wanted to inherit them. But of course, this simple fact barely hints at the work involved or the emotional aspects of the job. It's not always easy, but it's a job that you can do well if you bring to it good measures of patience, common sense, and persistence. Some help from this course, and occasionally from knowledgeable professionals, won't hurt, either.

Winding up an estate will probably take from 6 to 18 months, depending on the circumstances and the law in your state. Some probate courts are also more backlogged than others. Here's how it usually goes:

- **First week:** Immediate practical decisions
- **Next several months:** Financial and legal matters
- **One (occasionally two) years:** Taxes.

WHAT EXECUTORS DO

An executor is the person named in a will to handle the property of someone who has died. If the deceased did not leave a will, the probate court will name an "administrator" to this role. Both executors and administrators are also called "personal representatives." In this course, we default to the common term "executor," but the responsibilities for these roles are essentially the same.

As executor, you must collect and take care of the deceased person's assets, pay debts, and distribute what's left to the people who inherit it. Sounds pretty straightforward and, in many instances, it is. Here's a little more detail.

Gather the deceased person's assets. This part shouldn't be hard, especially if you're familiar with the deceased person's finances and the assets are typical things, such as a house, a car, and bank and investment accounts. But if you're unprepared, and the deceased person leaves behind murky finances and jumbled records, you might have a tougher time knowing what property you're supposed to take charge of. (The best strategy is to get things straightened out before the death, as

explained in Chapter 2; if that's not possible, see Chapter 1 of course 40752B for help with finding and making sense of financial records and other papers.)

Take care of property. You must safeguard the deceased person's property (both real estate and "personal property," which is essentially everything else) until you hand it over to beneficiaries. For example, if a house or condo is empty, and a car is parked at the curb, you'll need to make sure both are secure. You might also have to decide whether to sell certain assets, either to raise cash or to avoid seeing an asset lose significant value. When it comes to managing investments, your duty is not to turn a big profit, but to avoid losing money.

Pay debts and taxes. Most people don't leave behind outsized debts or tax bills, so this isn't normally a problem. But if the estate doesn't contain enough money to go around, it can be a headache. You aren't personally liable for the deceased person's debts (unless you were married, in which case you might be); you'll pay them from the deceased person's assets.

You'll have to file income tax returns on behalf of the deceased person and, if the estate goes through probate and receives income, on behalf of the estate as well. You almost certainly won't need to file a federal estate tax return; very few estates are big enough to require them. (See Chapter 1 of course 40756B.) Thirteen states collect their own estate tax, however, and most impose the tax at a lower threshold than the federal estate tax. (Two states impose their state estate tax on estates over $1 million in size—this is the lowest threshold among the states.) Check Appendix A to see whether your state imposes a state estate tax and, if so, the threshold at which it begins.

Distribute what's left. You'll transfer assets to the people who inherit them under the will or under state law if there's no will. This often involves going to probate court, but not always.

Summary of an Executor's Duties

- ☐ Find the will, if any.
- ☐ Notify the post office, utility companies, credit card companies, banks, and other businesses of the death.
- ☐ Notify the Social Security Administration and any agencies from which the deceased person was receiving benefits.
- ☐ Inventory all assets and, if necessary, have valuable ones appraised.
- ☐ Determine whether probate is necessary; if it is, conduct the probate court proceeding or hire a lawyer to do it (or help you).
- ☐ If there's a living trust, work with the successor trustee to coordinate bill paying, property management, and other tasks.
- ☐ Notify beneficiaries named in the will or people entitled to inherit under state law.
- ☐ Take good care of estate assets until you turn them over to the beneficiaries.
- ☐ Solicit beneficiaries' input on and consent to important decisions, such as selling assets or changing investments.
- ☐ Collect money owed to the estate—for example, final wages or insurance benefits.
- ☐ Pay bills owed by the estate.
- ☐ File final income tax returns for the deceased person.
- ☐ If the estate was very large, hire a tax lawyer to prepare estate tax returns.
- ☐ Distribute the assets.

Whether you need to go through probate will depend on what kinds of assets the deceased person left and how much estate planning the person did. Many kinds of assets (for example, individual retirement accounts, payable-on-death bank or brokerage accounts, and life insurance policies) can be transferred by the institutions themselves, without the need for probate, but only if the owner filled out the forms that the institutions required for a post-death transfer.

In recent years, many states have simplified probate significantly, so even if probate is required, it won't drag on like a court case in a 19th-century novel. And almost all states now offer simplified probate for "small estates." (See Chapter 2 of course 40758B.) What qualifies as a small estate might surprise you: In some states, estates worth hundreds of thousands of dollars can slip under the wire.

Help out. Finally, you might find yourself helping beneficiaries with matters that aren't, strictly speaking, within your authority as executor. For example, life insurance proceeds aren't part of the estate, but a beneficiary might want you to help claim policy proceeds.

IF YOU'RE A TRUSTEE

Many people use living trusts as substitutes for wills, so you might find yourself tapped for the job of trustee rather than, or in addition to, executor.

How does a living trust work? A simple living trust is used to leave property to loved ones, like a will, but with one important distinction: The living trust avoids probate. If you're wrapping up this kind of trust, you can often carry out your duties in several months. That's because you don't have to get probate court approval. You can simply transfer trust property directly to the people named in the trust document. However, if the trust is set up so that an adult manages property left to children (often grandchildren), your job as trustee might last years as you invest and spend trust property on behalf of the children until they're grown.

Even if you're a trustee, you might very well still need this course. Here are two common scenarios in which you'll need to act as an executor or administrator in addition to a trustee:

- The deceased person made a will naming you as executor, in addition to the living trust naming you as "successor trustee" (the technical term for the person who takes over when the trust maker dies). This might happen in the situations described just below.
- The deceased person made a living trust and did not make a will, but owned property outside of the trust—maybe because they didn't correctly transfer property to the trust, or maybe because they acquired property shortly before they died and never got around to it.

In the latter scenario, unless all of the non-trust property transfers outside of probate or using other special procedures (see Chapter 1 of course 40757B through Chapter 2 of course 40758B), you'll need to go through the regular probate process. It's counterintuitive that you'd need to take the estate through probate when a trust exists and there wasn't a will, but it's possible.

As for the first scenario, why would someone who made a living trust also make a will? In fact, two types of wills very frequently accompany a living trust:

- A simple backup will that names beneficiaries for any non-trust property, or
- A "pour-over will" that names the trust as the beneficiary of any nontrust property.

Adding a will to "catch" non-trust property helps make the estate plan more airtight by ensuring that every single piece of property goes to a specified beneficiary. In addition, only wills can name guardians for minor children; living trusts can't.

The examples below illustrate the common situations in which a person handling a trust might still need to deal with wills and probate: a trust with a stand-alone will, a trust with a "pour-over will," and a trust where the decedent failed to add property to their trust and also left no will.

Example 1

John's living trust directed the successor trustee to distribute his assets equally among his children. He forgot that, in his will made years earlier, he directed that the income from his invention, which was licensed, be given to his mentor, Pete. John never revoked that old will. When John died, the royalties from his invention had to go through probate court before ultimately going to Pete. John's children got equal shares of the rest of John's estate (according to the trust terms) without having to wait for probate.

Example 2

Alice established a living trust giving all trust property to her children. She also wrote a will specifying that any assets not in the trust be distributed to ("poured over" into) the trust. Alice dutifully transferred all appropriate items to the trust shortly after she made it. But a few years later, she inherited her father's vintage Corvette and took title in her name alone (rather than transferring it to the trust). When Alice died, the successor trustee had to go through a probate proceeding in order to "distribute" the car to the trust, as directed by the will. The car was then sold and the proceeds divided among Alice's children, as her trust directed.

Example 3

Let's return to Alice, with the same facts except that her will specified that any assets not in the trust be given to her sister (rather than distributed to the trust). When Alice died, the Corvette went through probate before being given to her sister. The property in Alice's living trust was given to her children.

Example 4

Let's use the same facts again, except that Alice did not make a will at all. The probate court appointed the successor trustee the "administrator" of the estate to handle the probate of the Corvette. The car was distributed according to the state laws of intestate succession, which set out which relatives get property when someone dies without a will. The property in Alice's living trust was given to her children.

To summarize, this course will help you when you've been named the executor in a will (whether or not a living trust exists), or when the deceased person did not make an estate plan and you're taking

charge as the administrator or estate representative. It might also come in handy if you're a trustee and discover that the deceased person owned property that was never transferred to the trust.

YOUR LEGAL DUTY

As executor, you are in charge of property that belongs to other people (beneficiaries and creditors). You are also following instructions left in a will by someone who is no longer there to supervise you. Because such a situation leaves a lot of room for mischief by a dishonest person, the law requires you to act with the highest ethical standards. You must follow a set of well-established rules and procedures.

An executor has what's called a "fiduciary duty." It means that you must always act in the best interest of the estate—not your own interests. For example, if you and the deceased person owned a business together, and you want to buy the deceased's half interest, you must follow a scrupulously fair, open, and competitive process to offer the business interest for sale. The process would have to be run solely for the estate's benefit, not yours.

Here are a few examples of acts that would violate your legal duty and could get you into trouble:

- Benefiting personally at the expense of the estate—for example, selling yourself estate property
- Selling an asset during probate if you don't have authority
- Investing estate assets recklessly—for example, in a volatile stock, or
- Arranging things so that one beneficiary ends up with an unfairly large share of assets.

If you violate your fiduciary duty, beneficiaries can sue you for any loss you caused them, and a court can remove you from your post. In some states, a court can remove an executor not only for misconduct, but also if all of the beneficiaries request it.

An executor who steals money from the estate can go to jail, just like anyone else who steals. For example, a Massachusetts executor who was in charge of $550,000 from a wrongful death lawsuit over her mother's death didn't split the money with her siblings as she should have under state law. Instead, she and her husband kept most of it; they were both sentenced to 18 months' imprisonment. ("Brockton woman sentenced after cheating her siblings out of thousands in settlement in mother's death," *Boston Globe*, Jan. 25, 2012.)

PAYMENT FOR SERVING AS EXECUTOR OR TRUSTEE

You're probably entitled (under the terms of the will or by state law) to compensation for your work as executor. Whether to accept this compensation is a personal decision.

Some family members feel uncomfortable accepting money. Others might believe it's only fair that they be compensated for their time. And some might decide based on whether the responsibilities