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Being there

An executor's job is an honour, but brings responsibilities and risk

A friend or family member has asked you to be an executor of his or her estate, and you're honoured. But should you accept? You may want to consider this first – and think about whether the executors you've chosen for your own estate are still up to the job.

"The initial response when you're asked to be an executor is usually a feeling of flattery – often without an understanding of the responsibilities. It's important to choose a person with the ethics and competence to carry out your final wishes, but it is also important to make them aware of the time and work that may be involved," says Brad Amlin, financial advisor and principal of Marlatt, a financial and estate planning firm in Oakville, Ontario. "Settling an estate can be an extremely long, drawn-out process."

It is essential for anyone considering the role, he says, to determine how organized the estate is. "The more legwork done in advance, the easier the role of the executor will be."

Before you decide to accept the role of executor, says Colleen Gibb, FCA, tax partner at Gibb Widdis in Ancaster, Ontario, ask to see the will in question. "That will tell you how complicated things are, and if there might be problems. If they own a business, the duties of the trustee could be a full-time job. Should they have (minor) children, remember that, as executor, you'll have to look after assets in trust until they're 18."

You may also want to think about whether you're in agreement with the person's wishes, she says, because you will have to carry them out.

The average estate requires at least 18 months to settle and can take many years. For family members who are mourning loved ones, these challenges, in combination with the normal grieving process, can be very difficult.

"Ask the person if he or she is in agreement with you hiring a lawyer, a trust company or perhaps a chartered accountant to assist with the administration," says Gibb. "Some people feel that they will save money by asking a friend or family member to do the job, but there are many tax and legal issues that have to be considered. You are personally liable if you've done something wrong – not the estate."

Other potential problems may stem from disinheriting a family member or leaving less than half of assets to a spouse, says Gibb. "If you have any concerns at all, but would like to take the job on, suggest to the person that you sit down with his or her lawyer to go through the potential pitfalls."



PHOTO: KIM JEFFERY

Oakville, Ontario-based financial advisor Brad Amlin says when considering who to select as executor of an estate, "It's important to choose a person with the ethics and competence to carry out your final wishes, but it is also important to make them aware of the time and work that may be involved." He adds, "The more legwork done in advance, the easier the role of the executor will be."

The emotional costs of not doing so can be enormous. "In one case I had recently, the lady left her RRSP to her grandchildren by designating them as beneficiaries, her home to her daughters, and the rest to her son. But the RRSP was huge, and because the grandchildren were minors, the assets had to be put into a trust. The house had to be sold to pay the enormous tax bill, and there was nothing left for the daughters or the son. The executor had to decide if the lawyer who drew up the will should be sued – it was a mess."

In choosing an executor, she says, "You want a certain level of sophistication depending on your assets and liabilities; if you anticipate controversy among the beneficiaries, you might want to choose someone who is not a family member, so that he or she will be impartial. You don't want to appoint (someone who is unlikely to) outlive you, and if the executor is out of town, it creates all kinds of problems, costs and inconvenience."

Executors are under no obligation to serve, so many people name alternate executors to ensure that the courts won't have to appoint someone if the original executor is unable to fulfil his or her duties.

It's also important, says Amlin, that executors be aware that there is a legislated fee that can be charged, a percentage of the overall estate, to compensate for the time involved. "There can be an enormous amount of work involved, and time often translates into money."

Along with the will itself, the choice of executor should be revisited regularly. "People change or move away – and

your personal situation will change too," says Gibb. "Life gets more complicated, and hopefully your assets will

grow. The person you chose when your children were little may not be the best person today." ■

Seek good advice

For many Canadians in midlife and beyond, the professional relationship with a financial advisor is the fulcrum of their financial affairs. Investment accounts, insurance policies, debt repayment and charitable giving records are often all monitored by a financial advisor – meaning that the financial advisor can be of tremendous help to the executor of an estate.

"At the very least," says Brad Amlin, financial advisor, "it's important that the asset holder provide the executor with the financial advisor's contact information. Often the executor won't even know where to begin. They end up sorting through piles of documents – they find an insurance policy purchased in 1964, call the number listed and find it out of service."

Those frustrations can be avoided. "Just keeping a current list of all policies and accounts is a really good financial planning idea. And ideally, the executor will be introduced to the financial advisor in advance."

Make a to-do list

The executor of any estate has a long list of duties and responsibilities to fulfil, says Colleen Gibb, FCA, tax partner at Gibb Widdis, including the following:

- Ensure the funeral arrangements are carried out according to the wishes of the deceased.
- Ensure that all assets are safeguarded.
- Ensure that the insurance of all property continues. (Many insurance policies state that if no one is in the insured home for 30 days, the policy is automatically cancelled.)
- Apply for life insurance benefits, the death benefit from the Canada Pension Plan, and probate.
- Cancel subscriptions and utilities.

In addition, she says, "You really shouldn't distribute an estate for at least six months after the probate has been granted, because people can contest the will within that period. If you've distributed the assets early, you're personally responsible for any damages awarded."

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