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APPOINTMENT OF AN EXECUTOR OR ADMINISTRATOR OF AN ESTATE

Special points of interest:

Choose experienced investment advisors and legal counsel to minimize the risk of personal liability

An Executor is named in Decedent's Will

An Administrator is appointed where there is no will or when the person or persons named in the will cannot act

A probate estate will be represented by either an Executor or Administrator. The representative will be responsible for the settling of all necessary estate matters. This article will only review some of the reasons why an Executor or Administrator are needed and will not review all of the jobs to be completed by them. It is extremely important for those acting as an Executor or Administrator to take further steps to help reduce their exposure to personal liability.

The probate process will not be necessary upon the death of all individuals. A personal representative will have to be appointed if a decedent owned or had a right to own any probate assets at the time of death. Examples of probate assets are: a bank account in a decedent's name alone, a piece of real estate in decedent's name alone and shares of stock in decedent's name alone. Examples of non-probate assets are: bank accounts held jointly between decedent and another individual, a piece of real estate owned jointly between decedent and another individual, and IRA, 401K or life insurance policies naming a specific beneficiary.

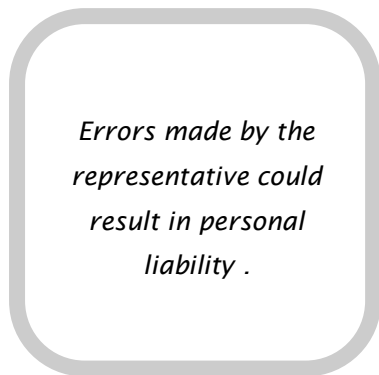
The non-probate assets will

pass outside of an estate directly to the joint owner or designated beneficiary. Non-probate assets may be inheritance and/or estate taxable, but will not be under the control of either the Executor or Administrator. It is possible that the probate estate could be made liable for the tax on non-probate assets if the "tax clause" in a will was not drafted properly or if no will existed. This could cause someone other than the recipient to pay the tax due on the assets passing outside of the estate.

If probate assets exist, a personal representative must be appointed by the court to gain access to those assets. The appointment process will begin with the personal representative going in person to the Register of Wills office in the county in which the decedent resided as of the date of death. The representative will petition the court, thus requesting the authority to act on behalf of the decedent's estate. This is a rather painless process, but there is specific paperwork that must be taken to the Register of Wills or appointment will be denied.

Absent the appointment of an estate representative, there will be no

way to sell or redeem a probate asset. The probate process, very generally, begins with the court appointment of a personal representative for the estate. Thereafter the personal representative will be required to follow the formalities of the estate administration set out by State statutory law. Errors made by the representative could result in personal liability. For example, if an Executor retains assets that are invested in high risk assets and the value declines he could be liable to return a portion or all of the lost value to the estate. This liability can be reduced or eliminated by hiring experienced investment and legal counsel.



There is only a subtle difference between the position of Executor and Administrator. An Executor will be appointed if the decedent had prepared a valid last will and testament, specifically naming an individual, multiple individuals or a corporate entity to act in that capacity. The creator of the last will and testament can name any individual including, but not only, family, friends or business associates. Some examples of corporate entities are banks, trust companies and law firms.

An Administrator will be appointed most commonly where a decedent did not create a last will and testament and therefore did not name an Executor. An Administrator will also be appointed where the named persons or corporate entities either are unable or unwilling to act as Executor. In the absence of an Executor, there is a statutory list of individuals who will be given preference to act as Administrator. For example, if a married individual passes away without a last will and testament, and probate is necessary, the decedent's

spouse would have the first right to act as the Administrator. If the decedent's spouse refused to act then his or her children would have the right to act as co-trustees and so on, depending on who the beneficiaries might be.

An Administrator or Executor could be necessary even if all assets were owned in a non-probate manner. For example, if the decedent died in a car accident, it would be necessary to have a representative of his estate appointed so that a personal injury matter could be instituted. The court would have to authorize this individual to bring a law suit on behalf of the estate.

If you are ultimately appointed as either an Executor or an Administrator you will be considered the representative of the estate. As the representative you will be expected to carry out the intentions of the decedent, the statutory requirements for probate and also protect the assets of the estate so that they can ultimately be enjoyed by the beneficiaries. It is always prudent for an Executor or Administrator to discuss the particulars of the estate with an attorney who has had experience handling estate administration work.

Douglas L. Kaune and David M. Frees, III are local Elder Law Attorneys practicing in the areas of Estate Planning, Estate Administration and Nursing Home Care and can be reached at 610-933-8069.

The information provided in this article relates only to Federal and Pennsylvania laws presently in effect as of the writing of the materials. The article is only intended to be informational and each case should be reviewed with a practicing professional.