

## You've Been Appointed Executor: What Do You Do Now?

By Abbe I. Herbst

It is quite common for the spouse, one or more children or other relatives, or a family friend to be designated as executor of a last will and testament. Subject to limitations imposed by some states, such as Florida, others can be appointed, such as a trusted professional advisor or a bank or trust company. One of the most common questions that I receive when an inexperienced individual agrees to serve as executor and has been appointed by the court is, "Now what do I do?"

Working with the attorney (who prepares the probate petition and other papers), the nominated executor notifies the necessary parties and files the will with the court. Once the will has been "probated" or "admitted to probate" — which means that the judge has issued a judgment or decree to the effect that the will (and any codicils) is, in fact the *last* will and testament of the deceased person — the executor is appointed by the court and receives authority to act. This authority to act is usually evidenced in the form of "letters testamentary." Now the work really begins!

### *Determining Assets and Liabilities*

The executor must locate, value and take custody of the decedent's assets. These may include real estate, cash on deposit, securities, business interests, safe deposit box contents, jewelry, collectibles, and commissions that may be owed to the decedent if, for example, he or she was a real estate or insurance broker. Life insurance policies and deferred compensation agreements must be examined, because even though they may be payable to designated beneficiaries other than the decedent's estate, they may have to

be reported by the executor as assets of the estate on the estate tax or inheritance tax returns.

It is important to review the financial records of the decedent covering the three years prior to death. These records include check registers and checking account statements, brokerage account records, custody account statements, income tax returns and all gift tax returns. This review can often lead to the discovery of additional issues, such as unreported gifts for which gift tax returns must be filed. It can also lead to additional assets. For example, suppose the review of the checking account records shows the payment of an insurance premium. The premium payment leads to an insurance policy, and the insurance policy discloses a schedule with some valuable items of which the executor was previously unaware.

In addition to locating all the assets, the executor must determine the financial obligations that survive the decedent. These may include mortgage debts, promissory notes, credit card balances, unpaid taxes and judgments arising out of litigation.

### *Filing All Tax Returns*

There are a number of tax returns that must be filed after death. The decedent's final personal income tax returns must be filed for the year of death. If the decedent was survived by a spouse, those final returns should be coordinated with the

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## who's who

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We hope you have found this issue of the *Estate Planning & Tax Advisor* to be of interest. We invite you to contact the editor, Abbe Herbst, at (212) 278-1781 or [aherbst@andersonkill.com](mailto:aherbst@andersonkill.com), with your questions and/or concerns.

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spouse, so that joint tax returns can be filed. After death, the estate itself becomes a taxpayer, with its own identification number, and must file fiduciary income tax returns. Depending on the timing of distributions to beneficiaries and deductions, the executor may find it advantageous to select a fiscal year rather than a calendar year.

In addition, the executor has the responsibility to file estate tax returns and/or inheritance tax returns, and to make elections regarding the marital deduction, other deductions and the use of alternate valuation date values. If the decedent owned real property or tangible personal property in more than one state, multi-state estate tax returns may have to be filed.

### *Administering the Estate*

The executor must liquidate sufficient assets to pay the various debts of the decedent, the funeral and administration expenses, taxes, and to satisfy any cash bequests. The executor must evaluate the assets of the estate and decide which investments to retain, which to liquidate and how to reinvest. If any trusts are created under the will, the executor must fund those trusts by paying over assets to the trustee.

The executor must distribute the assets of the estate to the individuals, trusts or charitable beneficiaries in accordance with the terms of the will. In some states, the executor is required to file a report with the court that issued the letters testamentary. Finally, the executor often will seek the protection afforded by accounting to the beneficiaries for all the financial transactions engaged in by the executor, and by having that account approved by the beneficiaries or by the court.

The duties of an executor go well beyond those described here. Although the executor is entitled to receive compensation for those duties, the responsibilities are very real and very serious, and should not be taken or assumed lightly. ▲

***Helpful Tip:** Just because the will nominates a person as executor, that does not mean that the nominated person must agree to serve. The process in the United States is that the will must be presented to the court having jurisdiction over the decedent's estate, often called Surrogate's Court or Probate Court. The nominated executor must affirmatively agree to serve as executor. If the nominated executor decides that he or she does not wish to qualify, then a renunciation is filed. A will should provide for at least one alternative or successor executor, in the event the primary executor does not survive, dies while in office, fails to qualify, or otherwise does not serve.*

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