

Executing a Will



When a testator dies, a community of heirs is formed by law. During this difficult period of mourning, the executor provides extensive support to the heirs in dealing with the associated administrative tasks.

Advantages of an Executor

The executor is the testator's person of trust and represents his/her wishes in the settlement of the estate and implements these wishes together with the heirs. The executor takes care of all the associated financial, tax and legal matters with respect to the estate, and ensures that the heirs do not have to deal with administrative matters during the period of mourning. In the event of differences of opinion between the heirs, the executor looks for solutions that will permit a compromise in order not to jeopardize the division of the estate.

Under What Circumstances Is it Advisable to Appoint an Executor?

Appointing an executor is especially advisable in the following situations:

- Complex family or asset situations
- Division of marital property and inheritance
- Extensive instructions have been given by the testator
- Heirs are minors
- Estate includes real estate
- In the case of unmarried persons, if heirs are domiciled abroad
- Inheritance disputes are to be expected

How Do I Appoint an Executor and Who Is Suited?

Anyone can appoint an executor in the form of a last will (in a testament or inheritance contract). In general, any person with the legal capacity to act can be named as an executor. The law does not require any special skills. Besides natural persons, a testator can also appoint legal entities as executors.

However, problems could arise if a relative or even an heir is appointed to execute the will, as individual heirs could feel that they are being discriminated against as a result. For this reason, it is advisable to appoint a neutral executor to settle the estate. Long-standing, professional and trusted advisors of the testator are particularly suited.

It also makes sense to appoint a replacement executor in case the preferred candidate does not accept this mandate, dies prior to completing the mandate, or resigns as executor. Once the will has been opened, the person named as executor in the will or inheritance contract will be asked by the competent body (e.g. a court or notary) whether they wish to accept the mandate or not. If they accept the mandate, they will receive the certificate of executorship, which will entitle them to represent the community of heirs.

What Are the Duties of an Executor?

The executor must represent the last wishes of the testator. They implement the will or inheritance contract and prepare the division of the estate. They ensure that the inheritance is optimally managed and divided in line with the testator's wishes. The executor is responsible for all measures necessary to preserve the value of the inheritance. One important responsibility of the executor can also be to mediate between heirs. In the event of a dispute between heirs, the executor

looks for solutions that will permit a compromise in order not to jeopardize the amicable division of the estate.

The executor of the will is entrusted with the following duties in particular:

- Managing the estate (determining, investing and safekeeping of assets)
- Representing the heirs vis-à-vis the authorities, banks and other third parties
- Paying the testator's debts from the estate assets
- Organizing any legacies
- Handling tax matters
- Transferring real estate to the heirs
- Dividing the estate in accordance with the testator's instructions or in accordance with legal provisions

The Process of Executing a Will

An executor provides support to the heirs in managing and then subsequently dividing the estate. The executor has immediate disposal over all of the testator's assets (such as accounts, safekeeping account holdings, and real estate), and does not have to wait for the certificate of inheritance to be obtained. A major benefit of having an executor is therefore that the testator's assets are frozen only for a short period of time.

The executor first draws up a complete inventory as of the date of death, to determine the size of the net estate. Key tasks of the executor are managing the estate and paying any debts. Other duties include handling the tax affairs up to the date of death. Finally, the executor draws up the contract of division and, after receiving the consent of all the heirs, divides the estate. The process of executing the will concludes upon the full division of the estate and the submission of the final invoice.

How Is the Executor Compensated?

The executor is entitled to appropriate compensation for the activities performed. Therefore they need to give a detailed account of the time and effort involved. The executor is expected to settle the affairs efficiently.

Conclusion

Appointing an executor may be advisable for a range of family situations or asset constellations to ensure that the estate is settled quickly and amicably. The executor must make sure that the inheritance is properly managed and divided. In other words, the execution of the will guarantees that the testator's wishes are properly followed. In addition, the heirs are relieved of the administrative tasks associated with settling the estate.

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