

SO YOU'VE BEEN APPOINTED EXECUTOR

Tom Carter and Elyssa Lockhart

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Introduction

Each and every one of us has friends, family, or loved ones and even though we don't like it, the fact is that they — and we ourselves — are getting older every day. It goes without saying that we will all die eventually, and when we do, our debts and assets will have to be addressed properly. That means each of us has to know something about what it means to be an executor so we will know what to do when the time comes.

There is another reason why we need to know something about what it means to be an executor. We all know that we should prepare our own wills, and if we know what being an executor is all about, we will be able to choose the right person, for the right reasons, to do the job in our own estates.

We wrote this book to explain to you what you need to know when you are an executor, and to help you choose the best executor for your own estate. If you decide you need assistance, we hope that the information we provide about the various professionals and resources available will help you get that assistance, at a reasonable cost. Finally, we hope it will help you avoid some agony when you are faced with one of the toughest decisions when you make your own will — who to name as your executor.

Throughout the book you will find tables of useful information and sample forms. Please note, each province and territory has its own forms for probate applications. To provide examples of each approved form for each jurisdiction would take two or three books the size of this one. Instead, in order to give you an idea of what those forms look like and what they say, we

have created our own generic sample forms that contain the basic information commonly required across the country. If you are looking after an estate yourself, you will have to get the correct forms for your province or territory, as ours are not intended to be used in practice.

Please note, this book is not intended to give you detailed information on each and every challenge that can arise in the course of looking after an estate; it is not an encyclopedia of the law of executorship. Nor does it try to give you precise technical details about the forms and legal requirements of each province and territory. It is not a comparative law treatise. If you have questions about the laws or procedures in your province or territory, you should consult a lawyer, an accountant, or another estate professional in your area.

What this book does give you is an introduction to the predictable and unavoidable issues that each and every executor will face regardless of the size of the estate involved. These are the issues that our clients have dealt with over and over again during our decades of experience in private practice, and also in Tom's years as a trust officer with a major trust company.

Being an executor is a fascinating experience. Sometimes it is a short and simple task that only takes a little common sense. More often, however, it is a long and tiring experience that leads you into a tangle of legal jargon and principles that is overgrown with the unrealistic expectations of beneficiaries and the deep, sometimes unsettling, emotions that affect all of us when a loved one dies.

The purpose of this book is to give you a general idea of what you need to know to get through that tangled thicket called being an executor. I hope it gives you the knowledge and confidence you need to make that journey successfully. Also, if you decide that you need professional help, we hope this book helps you find it.

When you get right down to it, we are talking about two priceless gifts that are merely the flip sides of the same coin — honouring the wishes of a deceased person as quickly and cost effectively as possible and providing peace of mind for your loved ones and yourself in your will. When you think about it, it is within the power of each of us to give these gifts to those we love. We believe this book will help you do that.

Thank you for choosing this book, and good luck.

Part I

TO BE, OR NOT TO BE,
AN EXECUTOR

1

Finding or Choosing an Executor

1. It's Tough to Choose a Good Executor

In the practice of law, estate planning lawyers work with many people who are struggling with deeply emotional issues. They are trying to make their wills, and they can't always easily decide what to put in them. Whether the person making the will is single or married, has children or not, there are so many difficulties to work through. For some, the most challenging decision may be who to choose as beneficiaries and what to give each of them. Others, however, feel a more exquisite pain. They grapple with choosing the right executor — someone they can trust, absolutely and unconditionally, to carry out their wishes after they are gone.

One thing all estate planning lawyers will quickly tell you, is that clients often have strong, preconceived ideas about who they “should” be naming as their executor and how people “should” go about choosing an executor. People with families often don't want to hurt anyone's feelings; they wanted to name everyone to act together as joint executors, so no one will feel left out. Others assumed that it is right to always name the eldest adult child, regardless of that child's demonstrated ability to do the job. Those without family worry about burdening their friends with the job; they are often interested in hiring a professional person to handle the work, but they are anxious about the extra cost that might involve, and about the possibility of delay in getting things done.

Sometimes the struggle to choose the right executor becomes so difficult that people are brought to a standstill and their wills run the risk of never being completed. Thankfully, that is very rarely the case when they seek advice from a professional with experience in this field.

2. It's Tough to Be an Executor

We have each worked with many executors, those who had been named in a will and were then called on to step in after the person died. These executors always knew it was an important job but they were usually in the dark about what they were supposed to do and when they were supposed to do it. Some of them didn't even know they had been selected as executor until after the person died and the will came out of a lawyer's vault or a safety deposit box. They had no chance to prepare themselves for this unique and demanding job.

We have observed that most people who are named as executor don't like it. They may initially have felt honoured to have been named to such an important role, but frequently later found the experience to be much more difficult and time consuming than they expected. As the days and weeks wear on, any honour that might have been attached to the appointment typically fades. They often wished that the dearly departed had never thought of them at all. It is not uncommon for an executor to say "never again" as an estate administration matter is winding up, whether they have taken the opportunity to obtain professional help all along, or worked their way through most of the process on their own.

Even lawyers who routinely assist executors with the administration of estates are not always fully aware of the work that is required. A lawyer usually prepares the legal paperwork from the comfort of their desk, while the executor handles everything else — making funeral arrangements, sorting through papers, disposing of foodstuffs and other perishable items, deciding what clothes to sell and what to send to charity, holding a garage sale for unwanted furniture or sending it to auction, tracking down bank accounts and other valuable assets, cancelling utility accounts, paying outstanding bills, filing claims for government and insurance benefits, getting a house or apartment cleaned and ready for sale or return to a landlord, finding and working with a real estate agent and accountant, and more.

3. How We Discovered What Being an Executor Is All About

Although Elyssa's practice does include acting as a professional executor, Tom discovered that he really didn't know anything about the physical side

of being an executor until he left law to become a trust officer with a trust company. Trust companies are sometimes appointed executor in the wills of people who have no one else to choose and when that is the case, trust officers are the ones who do the executor work for the trust company.

For obvious reasons of privacy, we can't tell you anything about the actual cases we have worked on, but here is a typical, fictional case to illustrate. It's about Fred.

At the trust company, the first thing Tom did every morning was check the obituaries in the local newspaper. Then he checked those names against his records to see if he had a will for any of those people in the trust company's storage vault. In Elyssa's practice, she is almost always made aware of the poor health of one of her clients by the client themselves, an immediate family member or by a treating physician prior to their death, but every once in a while an obituary does provide the first notification. In Fred's case, Tom discovered that a client of the trust company had died when he read the morning obituaries. Fred had died, and because he had appointed the trust company his executor, Tom had his will in his storage vault.

The will was about 15 years old. It left everything in trust to Fred's only son, who lived hundreds of miles away. Unfortunately, the rest of the information in the file was dated and sketchy. Tom could see that Fred was divorced, lived in a small condo in an unassuming part of town, and had a small bank account with the trust company. Other than that, there was no information about assets, and Tom wondered why Fred had appointed the trust company at all. Trust companies charge significant fees for the executor work they do so they are usually appointed only when an estate is large enough to justify those fees, and there was nothing in the file to suggest that Fred's estate was large.

Tom called the funeral home that published the obituary and discovered that Fred's son was in town handling the arrangements. He was staying in a hotel, and he was desperately looking for his dad's will. Tom got in touch with the son and arranged a meeting at the funeral home. He came in looking confused, upset, and embarrassed. As he spoke, Tom learned why. He and his father had been on very bad terms and hadn't seen each other, or even spoken to each other, for many years. He had never visited the condo and wasn't sure in which part of town it was located. He didn't even know that his dad had been ill. He had received a call from the hospital the day his father was admitted, and even though he had caught the next flight, by the time he reached the hospital door Fred was dead.

The son said he was prepared to cover the cost of the funeral if necessary, but Tom was able to assure him that there was enough money in Fred's bank account for that. He was further relieved to learn that Tom had the will, but he was as puzzled as Tom was about the trust company's appointment — because of their estrangement, he had no better idea of his dad's financial situation than Tom did. At that point, the funeral director produced a key that he had taken from Fred's pocket. Assuming it to be for the condo, Tom and Fred's son set off to take a look.

The condo was a modest two-bedroom in an older part of the city. Being the home of a single, ailing man, it had a lived-in look. From speaking with neighbours, they discovered that Fred was a loner and his only social activity was going to bingo at a nearby social hall. The son said that he was overwhelmed and didn't know where to start. He also said he had pressing business engagements back home and would be leaving right after the funeral. Tom told him that as executor, the trust company would look after everything, and that all fees could be paid out of the sale of the condo. A few days after the funeral, the trust company's employees put on the rubber gloves and set to work.

By the time they were done they had discovered assets totalling \$1 million. Fred had investments with a variety of other financial institutions that had done very well over the years. It was now obvious why Fred had appointed a trust company as his executor, and we were happy to carry on with our responsibilities. Tom reported to the son, who was as astonished as we were, and who was happy that Tom was there to look after everything for him.

4. The Need Will Never Go Away

Being an executor is a difficult, complex job. It requires awareness of the laws of wills, estates, trusts, and taxes; comfort with a large amount of paperwork; willingness to work with various bureaucracies, as well as accountants, financial planning advisors and realtors; familiarity with banking and insurance; excellent conflict-resolution skills; a lot of hard physical work; and the wisdom to recognize not only when you need help but also where to go to get it. Many who have seen the process up close hope it is a job that they will never have to do.

Unfortunately, as difficult or upsetting as the job of executor may be, the need for executors will never go away, because loved ones die. And as the population of this country gets older and passes on, one thing is certain to happen — more of us will make our wills and more of us will discover that we have been named the executor of the estate in a friend or family member's will.

5. Who This Book Is For

In Canada, the law of wills and estates is a provincial responsibility, which means that each province or territory sets its own rules and regulations for executors. A book of this size can't begin to provide specific details of procedures, requirements, and forms for each province or territory. However, even though those rules and regulations are not identical across the country, and the precise number and nature of tasks that have to be done vary according to the size and complexity of each estate, the basic idea is the same.

If you are mourning the death of a loved one who chose you as his or her executor, if you are trying to choose someone to be your executor in your will; if you are wondering what the executor of an estate you are a beneficiary of needs to do before distributing your inheritance to you; or if you just want to inform yourself for that day in the future when you wake up and discover you are now an executor, continue reading because this book is written with you in mind. You'll learn what an executor must do, what pitfalls to avoid, when to consider getting help, and how to find it.