

SO YOU'VE BEEN APPOINTED EXECUTOR

Tom Carter, BA, MA, JD

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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 properly tended. 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 do 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.

I 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 help, I hope that the information I give about the various experts and resources available will help you get that help, at a reasonable cost. Finally, I 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, I created my own generic sample forms that contain the basic information

that is required everywhere. If you are looking after an estate yourself, you will have to get the correct forms for your province or territory.

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's not an encyclopedia of the law of executorship. Nor does it try to give you precise technical details about the forms and 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 an 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 my clients dealt with over and over again during my 20 years in private practice as augmented by the invaluable experience I gained during my 2 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, I hope this book helps you find it.

When you get right down to it, I am talking about two priceless gifts that are merely the flip sides of what being an executor is all about — honouring the wishes of a deceased as quickly and inexpensively 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. I hope this book helps 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

When I was in law practice, I did a lot of work with people who were in agony. They were trying to make their wills, and they couldn't decide what to put in them. Whether the person making the will was single or married, had children or not, there were so many difficulties to work through. For some, the most painful decision was who to choose as beneficiaries and what to give them. Others, however, felt a more exquisite pain. They were struggling to choose the right executor — someone they could trust, absolutely and unconditionally, to carry out their wishes after they were gone.

As I worked with these people I discovered that they often had strong, preconceived ideas about how to choose an executor. People with families often didn't want to hurt anyone's feelings; they wanted to name everyone as executor so no one would feel left out. Others assumed that it was right to always name the eldest adult child, regardless of that child's ability to do the job. Those without family worried about burdening their friends with the job; they often were interested in hiring a professional person to do the job, but they were 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 was so difficult that people were brought to a standstill and their wills never were completed.

2. It's Tough to Be an Executor

I also worked with many executors, those who had been named in a will and were now called on to step in after the person died. These executors 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 file or a safety deposit box. They had no chance to prepare themselves for this unique and demanding job.

Another thing I discovered was that most people who are named as executor don't like it. They found the experience to be much more difficult and time consuming than they expected. As the days and weeks wore on, any honour that might have been attached to the appointment faded. They often wished that the dearly departed had never thought of them at all. That impression was confirmed by a US survey I once saw that asked people who had been executors of an estate if they would like to do it again. The overwhelming majority said no.

I must admit, however, that I was not terribly empathetic to the plight of my executor clients. When I helped them look after an estate my job was relatively easy. I did the legal paperwork from the comfort of my desk while the executor handled 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, claiming government and insurance benefits, getting a house or condo cleaned and ready for sale, finding and working with a real estate agent, and more.

3. How I Discovered What Being an Executor Was All About

I discovered that I really didn't know anything about the physical side of being an executor until I left law to become a trust officer with a trust company. Trust companies, as you will see, are often appointed executor in the wills of people who have no one else to choose and trust officers are the ones who do the executor work for the trust company. So it wasn't long after I joined the trust company that I got my first executor assignment and a first-hand taste of what being an executor was really all about. For obvious reasons of privacy, I can't tell you anything about the actual cases I worked on, but here is a typical, fictional case to illustrate. It's about Fred.

At the trust company, the first thing we did every morning was check the obituaries in the local newspaper. Then we checked those names against our records to see if we had a will for any of those people in our storage vault. On this particular day, we did. Fred had died, and because he had appointed the trust company his executor, we had his will in our 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 sketchy. We could see that he 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 we wondered why Fred had appointed us at all. Trust companies charge significant fees for the executor work they do so they are usually appointed only when the estate is large enough to justify those fees, and there was nothing in the file to suggest that Fred's estate was large.

We called the funeral home that had placed the obituary and discovered that the son was in town handling the arrangements. He was staying in a hotel, and he was desperately looking for his dad's will. We 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 we 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 his taxi reached the hospital door Fred was dead.

The son said he was prepared to cover the cost of the funeral if necessary, but we were able to assure him that there was enough money in Fred's bank account for that. He was further relieved to learn that we had the will, and he was as puzzled as we were about the trust — he had no better idea of his dad's financial situation than we 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, we set off to take a look.

The condo was a modest two bedroom in an undistinguished part of the city. Being the home of a single, ailing man, it had a lived-in look. From speaking with neighbours, we discovered that Fred was a loner and his only social activity was going to bingo at the hall nearby. 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. We told him that as executor, we would look after everything, and that

our fees could be paid out of the sale of the condo. He agreed and a few days after the funeral we put on the rubber gloves and set to work.

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

4. The Need Will Never Go Away

Being an executor is a difficult, complex job. It requires knowledge of the law of wills, estates, and taxes; comfort with a large amount of paperwork; willingness to work with various bureaucracies; 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 of us hope it is a job that we 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, two things are sure to happen — more of us will make our wills and more of us will discover that we have been named 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 the 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, 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. You'll learn what you must do, what pitfalls you can avoid, when you should consider getting help and how to find it.