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March 2, 2011

# Choosing the Right Executor for Your Estate

By **DEBORAH L. JACOBS**

BEING an executor has always been a time-consuming job. And if the task of sorting through the remnants of someone's life and carrying out final wishes was not hard enough, it recently got even more complicated.

An executor administers an estate and remains in charge until it is legally closed. Before that happens, the will must be admitted to probate — the system through which a court determines if it is a legally valid document. After that, creditors and taxes, if any, must be paid and then the named beneficiaries are entitled to their share of what is left. If there is an [estate tax](#) audit or a will contest, the executor must oversee that process, too. Depending on the complexity of the estate and subsequent events, the job might last for a couple of years or even more.

Adding to the executor's responsibilities is the tax law that [President Obama](#) signed in December. It gives widows and widowers a special new break. For deaths in 2011 and 2012 (and beyond that if Congress extends the rule, as the president proposed in his latest budget), a surviving spouse can carry over any part of the \$5 million-per-person federal estate tax exclusion not used by the spouse who recently died.

To take advantage of portability, as it is called, the executor handling the estate of the spouse who died needs to transfer the unused exclusion to the survivor, who can then use it to make lifetime gifts or pass assets through his or her estate. The prerequisite is filing an estate tax return when the spouse dies, even if no tax is owed. This return is due nine months after the death with a six-month extension allowed. If the executor does not file the return or misses the deadline, the spouse loses the right to portability.

Given this new responsibility, along with more traditional ones like crawling through attics and placating disgruntled heirs, the ideal executor should not only be honest and diplomatic, but also well organized, good with paperwork and vigilant about meeting deadlines, said

Howard M. Zaritsky, a lawyer in Rapidan, Va. His litmus test: Is this someone who always files income tax returns on time?

Your choice can also mean the difference between an estate that is settled harmoniously and efficiently and one that gets bogged down in a legal and financial quagmire. Here are issues to consider.

**FAMILY OR OUTSIDER?** Most people think first of naming a family member, especially a spouse or child, as executor. The advantage of this is that your next of kin presumably understands your intentions better than anybody and can readily find the assets that need to be inventoried.

When clients don't have an obvious family member to choose, Leanna Hamill, a lawyer and specialist in elder law in Hingham, Mass., suggests they make a list of everyone they know and then whittle it down to trusted friends. Still, the options narrow as people outlive their contemporaries.

Donald Lehde of Houston, who is 80, single and does not have children, had initially chosen a close friend his own age. But lately he's been having second thoughts about whether this individual can handle all that's involved and is thinking of changing his will to name a younger person from his social circle instead.

Of course, individual executors, be they family or friends, can always call the experts when their own knowledge falls short, but Mr. Zaritsky would rather see a professional put in the role of executor. The possibilities include an individual adviser (for instance, a lawyer or accountant) or a corporate fiduciary, like a bank or trust company — though the smaller your estate, the less likely they will want to take it on. Their liability insurance could also come in handy.

Considering the changes in the financial services industry, Alan Gassman, a lawyer with Gassman, Bates & Associates in Clearwater, Fla., advises clients not to name a specific bank or trust company in their will. Instead, he advises them to appoint someone they trust to interview trust companies, negotiate fees and select one when the need arises.

**ONE OR MORE?** In a desire to treat their offspring equally and not hurt anyone's feelings, some people name all their children as co-executors. "That's a recipe for disaster," said Carol Cantrell, a lawyer and C.P.A. with Briggs & Veselka in Bellaire, Tex. "Either they're going to fight, or one person's going to do all the work." And any time there are papers to sign, it will be necessary to round up all of their signatures. Instead, Ms. Cantrell recommends naming just one child, and making the others alternates.

**WHAT WILL IT COST?** Many states set caps on the fees that executors may charge, but they vary widely. While some are framed simply in terms of what's reasonable, others are based on a percentage of the value of the assets that go through probate.

In Florida, you can't name someone from outside the state as executor (called a personal representative there) unless he or she is a member of your family. Florida law allows executors to charge hefty fees: 3 percent on the first \$1 million; 2.5 percent on anything above that, up to \$5 million; and 2 percent on the next increment, up to \$10 million. Many families do not realize that they can ask executors to charge an hourly rate instead, Mr. Gassman said.

When family members serve as executors, they often waive the fees. They can still get reimbursed for travel and other expenses necessary to perform their duties.

Another way to cut costs is to limit the value of assets passing under the will, Mr. Gassman noted. Retirement accounts, life insurance, savings bonds and jointly titled bank accounts, brokerage accounts and real estate do not go through probate, so don't count in the calculation of executors' fees. Nor do assets put into a revocable trust.

This is something to keep in mind if your primary residence is in one state and you own a vacation home in a different state. You can save your family from having to go through probate in two states by putting the vacation house in a revocable trust.

**WHOM SHOULD YOU TELL?** Before you sign documents naming someone as executor, make sure that person is willing to serve. Some people who have done this dusty, unpleasant work would rather not repeat the experience. Still, Robin Gorenberg, a lawyer in Brookline, Mass., recommends talking to the family members you did not choose, lest they feel slighted or think they're missing out on some great honor.

For example, Ms. Gorenberg said, one client with three adult children chose a friend instead of one of them, to reduce the chance of bickering after she died. When the mother told her children, they seemed relieved.