

The Executor's Role

You have been named to serve as executor for Cory Jack Fryling (Social Security number 364-96-1013). If you accept the job, you will be in charge of carrying out the directions in his will.

You don't need special financial or legal knowledge to be a good executor. Common sense, conscientiousness and honesty are the main requirements. If you need help, you will be able to hire lawyers, accountants or other experts and pay them from Cory Jack Fryling's estate. This document describes the duties of an executor. As you read, keep in mind that you can always hire professional help.

Must You Serve?

Being named executor does not obligate you to serve. When it comes time, you can choose whether or not to accept this responsibility. Even if you do agree to serve as executor, you can resign. If you decide not to serve, or if you resign, an alternate named in the will should take over. If no alternate is available, the probate court will appoint someone to step in.

An Executor's Duties

As executor, your duties are likely to include:

- Filing the will in the local probate court.
- Deciding whether or not probate court proceedings are needed.
- Deciding whether at least some assets can be transferred immediately, without formal probate, to the people who inherit them.
- If probate is required, asking the court to appoint you as executor and then shepherding the estate through probate.
- Sending notice of the probate proceeding to the beneficiaries named in the will and, if necessary, to certain close relatives who would have been entitled to property had there been no valid will.

- Locating and securing the deceased person's assets and then sensibly managing them during the probate process, which commonly takes about six months to a year, depending on where you live. During this time you may need to manage the deceased person's investments, pay bills and sell items of estate property.
- Handling day-to-day details, such as terminating leases and other outstanding contracts, and notifying banks and government agencies—such as the Social Security Administration, the post office, Medicare and the Department of Veterans Affairs—of the death and the fact that you are winding up the person's affairs.
- Setting up a bank account for the estate and transferring the deceased person's money to it.
- Paying continuing expenses that are necessary to keep estate property secure—for example, mortgage payments, utility bills and homeowner's insurance premiums.
- Paying any debts that the estate is legally required to pay. As part of this process, you must notify creditors of the probate proceeding. State law determines the required method of notice. Creditors then have a certain amount of time—usually about four to six months—to file a claim for payment of any bills or other obligations you haven't voluntarily paid. As executor, you decide whether or not a claim is valid.
- Paying income taxes. You will have to file an income tax return on behalf of the deceased person for the year in which the person died. If the estate receives enough income, you'll also have to file an income tax return on behalf of the estate.
- Paying federal estate taxes, if any. Most estates don't owe these taxes. It depends on how much property the deceased person owned at death and to whom the property was left. In 2020, only estates worth more than \$11.58 million will owe federal estate taxes. In later years, this exemption amount will rise with inflation. In addition, any amount of property left to a surviving spouse who is a U.S. citizen is estate tax free.
- Paying state estate or inheritance taxes, if any. Some states also levy estate or inheritance taxes. But like the federal estate taxes, most estates are not large enough to owe them. For estate taxes, the exemption for most states is lower than the federal exemption. For inheritances taxes (which are technically levied on

beneficiaries, rather than the estate) tax rate depends on the relationship of the beneficiary to the person who died. To learn whether your state has an estate or inheritance tax go to <http://www.nolo.com/legal-encyclopedia/state-estate-taxes.html>.

- Supervising the distribution of property, such as cash, personal belongings and real estate, to the people or organizations named in the will.
- Finally, after debts and taxes have been paid and all the property has been distributed to the beneficiaries, requesting the probate court to formally close the estate.

Obviously, the main reason for acting as executor is to honor the deceased person's requests. However, you will also be entitled to payment. State law regulates the exact amount of payment; it may be affected by factors such as the value of the property left by the deceased person and what the probate court decides is reasonable under the circumstances. Commonly, close relatives and close friends opt not to charge the estate for their services, but the choice will be up to you.

Working With a Lawyer

Many people think that probate requires hiring a lawyer. Although this can often be a sensible choice, especially for estates with lots of different types of property, significant tax liabilities or the potential for disputes among inheritors, it is not always necessary. If you are a main beneficiary, the deceased person's estate is simple, and you have access to good do-it-yourself materials, you may decide to handle the paperwork yourself. Many probate courts provide forms and helpful instructions online.

Essentially, handling a probate court proceeding requires shuffling a lot of papers through the court clerk's office. The vast majority of probate cases don't involve disputes that require a decision by a judge. You may even be able to do everything by mail. Doing a good job requires persistence and attention to tedious detail—not necessarily a law degree.

If the estate qualifies as a "small estate" under state law, you may be able to use streamlined probate procedures and handle the paperwork without a lawyer.

Here are two different ways to work with a lawyer:

- Hire a lawyer to act as a "coach." You can do much of the work yourself, but consult the lawyer when legal questions come up. For example, you might want the lawyer to do some research for you or look over documents before you file them. Along these lines, it is also a good idea to work with a CPA rather than try to handle very technical documents such as estate tax returns all on your own.
- Turn the process of probating the estate over to the lawyer. You'll still be responsible for making decisions, but the lawyer will handle all of the paperwork and deal with the probate court. The lawyer will be paid out of the estate. In most states, lawyers either charge a lump sum or charge by the hour—about \$200 to \$400 is common. In a few states, however, state law authorizes a specific fee. For example, in California and a few other states, the law authorizes the lawyer to take a certain percentage of the gross value of the deceased person's estate unless you make a written agreement specifying something different. You should be able to find a competent lawyer who will agree to a lower fee. In any case, be sure to negotiate the fee in advance.

Other Sources of Help

Probate court clerks often answer basic questions about court procedures, but they staunchly avoid giving legal advice. Some courts, however, have lawyers on staff who look over probate documents; they may point out errors in your papers and tell you how to fix them.

In many law offices, lawyers delegate all the probate paperwork to paralegals. In some areas of the country, experienced paralegals have set up shop to directly help people deal with probate paperwork. These legal document preparers do not offer legal advice; they just prepare documents using the information you give them. They can also file papers with the court for you. Make sure that the person you hire has lots of experience in this field and gives you references to check out.

A couple of books written for nonlawyers may also be useful:

- *The Executor's Guide: Settling a Loved One's Estate or Trust*, by Mary Randolph (Nolo). This book is a thorough guide to an executor's duties. It explains how to wrap up someone's affairs with a minimum of heartache and hassle, from finding and protecting assets to transferring property to beneficiaries with or without formal probate.
- *The Trustee's Legal Companion*, by Liza Hanks and Carol Elias Zolla (Nolo). This is a complete guide to serving as a trustee. It explains how trusts work, your duties as a trustee, and how to work with experts.
- *How to Probate an Estate in California*, by Julia Nissley (Nolo). This book leads you step by step through the California probate process. It contains tear-out copies of all necessary court forms and instructions for filling them out. Although this book focuses on California law, it offers general information about the probate process and may be useful to executors in any state.