



You've been named executor of an estate. What if you don't want the job?

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Being named an executor is considered an honour by some people. But what if you don't want the job of being in charge of someone's will?

In some cases, estate planning experts say people don't find out they were named an executor until the testator – the formal name for the person who wrote the will – has passed away. Or the will might be outdated, and the executor is a former spouse who doesn't want anything to do with managing their ex's estate.

Some people might also decide that they just don't want to commit possibly hundreds of hours, potentially over several years, dealing with banks and beneficiaries, as well as lawyers and companies – not to mention the liabilities if the executor is found not to have acted in the best interest of the estate and its beneficiaries.

The good news for anyone unable or uncomfortable with being an executor is that they're not legally required to do it – not if they back out early enough. You can also hire a corporate trustee, typically a trust company, to handle all the details of your estate if you don't want to put the burden on your loved ones.

“Just because you've been named in somebody's will doesn't mean that you have to do it – and that sometimes gives people peace of mind,” says Debbie Stanley, CEO of ETP Canada, a professional executor company based in Guelph, Ont.

Ms. Stanley encourages executors, especially those who are surprised at being thrust into the role, to think hard about whether they can manage the responsibility before moving forward. She estimates the average executor spends about 400 hours managing an estate over two or more years.

“Pause and then decide. You can also read the will, ask questions, then realize, ‘No, this isn't for me.’ That's okay,” Ms. Stanley says.

No ‘intermeddling’

The process of being removed as an executor depends on the circumstances, says **Akua Carmichael**, vice-president of estate planning and services at **Estate Stewards Inc.** in Toronto.

For example, a person named in a will as an executor can refuse the appointment by signing a legal form called a renunciation, as long as they have taken no action to deal with the estate of the deceased or applied for probate. The latter is the legal process of validating a dead person’s will and affirming the executor’s authority to deal with the estate.

However, executors can’t simply back out if they’ve started dealing with the estate’s assets, or what in legal terms is known as “intermeddling.” This means a person has managed an estate to the extent of maybe paying bills and debts, dealing with banks and consolidating assets, indicating they’ve accepted a certain level of responsibility and, in turn, liability for the estate.

“The person may still be able to resign, but they will likely have to go to court and get approval,” **Ms. Carmichael** says.

If a replacement executor is required, **Ms. Carmichael** says, ideally the current executor would obtain and provide the court with documented consent from the person or entity, such as a trust company, willing to act as their replacement.

“It’s also helpful to get consent from the estate beneficiaries for the replacement executor as the court will want to be satisfied that any replacement will be acting in the best interests of the beneficiaries,” she says.

Ms. Carmichael says it’s not uncommon for the court to require the outgoing executor to provide an accounting of their dealings with the estate while acting as executor, a process known as a passing of accounts.

She says there are also circumstances where a person named in a will as executor may not be able to act due to illness or incapacity. In these cases, if probate hasn’t been obtained or the person hasn’t intermeddled in the estate, a renunciation form can be signed by the individual or someone acting under a power of attorney for property on their behalf, if one exists.

“An application can also be made to the court for removal of a mentally incapacitated executor if they have obtained probate or started to deal with the estate,” she says.

Speak up while testator is still alive

Ms. Carmichael and other estate professionals urge people who know they’re being named an executor to be upfront if they can’t or don’t want the task.

For instance, **Ms. Carmichael** is seeing a growing number of adult children tell their parents they don't want to be their executor, either because of their own work or family commitments, or the responsibilities that come with the role.

“What has previously been considered such a great honour to name children has gone to kids saying, ‘Thank you, but no, thank you. I’d rather not do it,’” she says.

Vet the testator first

Would-be executors should feel emboldened to ask questions about the estate, including how much work is involved, how much time it will take and how they're being compensated, before agreeing to take on the role, says Erin Bury, co-founder and CEO of online estate planning platform Willful.

“It sounds like an awkward conversation ... but I think you want to try to get a sense of how much work will be involved, how complex the assets are and if there's anything that's going to really cause trouble during the estate administration process, such as a falling out with a beneficiary ... or if they have a lot of debt or claimed bankruptcy,” she says, noting that trust companies would ask similar questions before taking on the job.

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