

10 Things to Know if You Are Not the Executor

1. The court has to approve the executor's appointment.

Unfortunately, it is not that uncommon to have one family member assume control over a deceased's estate because they are the eldest or most forceful. They often take control because they are designated as the executor under the terms of a will. However, it is important to remember that they are not "in charge" of the estate until the court appoints them in that role, regardless of what a will may say.

2. Talk with a lawyer.

A lawyer will be able to assist you with determining what your rights may be in a particular estate. Your rights are not just limited to inheritance of assets at the conclusion of the estate, but they also include requiring the posting of a bond for the executor to ensure that they administer the estate properly. You may also have the right to require an accounting of all expenditures from the estate and an inventory of assets to be filed with the court. This will allow you to track the work performed by the executor.

3. You have the right to attend and participate in hearings.

You, as an interested party of the estate, have a right to attend and participate in all hearings related to the estate. There may be only a few hearings in an estate with no complications or there may be many in a complex estate. It is important that you have a full and complete understanding about everything going on within an estate to ensure that your interests and the wishes of the decedent are protected.

4. Not all assets are under the control of the executor.

The executor of an estate, after being appointed by the court, only has control over assets called "probate assets." There usually exists "non-probate assets" over which the executor has no control. Typically, real estate

is the largest “non-probate asset” that we find in an estate. Therefore, the executor does not have the right to exercise control over real estate, although it often happens. You need to consult with your attorney to gain a clear understanding of where the boundaries are for the authority of the executor.

5. Debts and taxes follow the estate.

People often forget that the passing of a loved one does not absolve the debts or taxes of the decedent. Rather, the debts and taxes now become an obligation of the estate of the decedent. This means that the value of a given estate can't be truly computed until all valid debts, taxes, and costs of administration are paid. The executor is tasked with making sure that all debts, taxes, and costs of administration are paid before assets are distributed.

6. The executor is a fiduciary.

It is important to remember that the executor is acting in a position of trust on behalf of the estate and all interested parties. The interested parties include the court, beneficiaries of the estate, creditors of the estate, and the government (taxes). The executor can't do anything that would benefit themselves to the detriment of the other interested parties. The executor can be called on to explain all actions they took as the representative of the estate.

7. The executor must protect all assets.

Since the executor is acting as a fiduciary, it is important that there is no appearance of wrongdoing. This means it is necessary to ensure that all estate assets are protected from loss, theft, damage, or waste. The executor must also ensure that all assets are sold for fair market value. The executor can't sell assets to friends or family for less than fair market value without the express agreement of all interested parties. It is important to monitor the actions of the executor to ensure that he or she is protecting all assets and obtaining the highest return upon sale.

8. Many statutes of limitation exist.

There are many statutes of limitation which prevent matters from being brought before the court during an administration process. These include claims for debts that the decedent may have owed at the time of death. However, the most powerful statute of limitations relates to the right to contest a will. It is important to understand that time is of the essence in the administration of estates and you must act quickly to protect your interest in an estate if you feel that the current will is not in keeping with the wishes of the decedent. It is imperative that you consult with your attorney to determine how long you have to file a will contest.

9. The administration process may take months or even years.

The administration process for an estate usually takes several months to complete. There are even instances where the administration takes several years. You need to be aware of what factors can lead to a delay in administration so you can plan for your distribution. All too often, estates languish and don't get completed because the executor, for whatever reason, simply does not make the completion of the estate a priority. They allow the estate to sit inactive. You need to talk with your attorney about things you can do to assist the estate process towards completion.

10. Communicate regularly.

One of the main reasons litigation ensues in estates is because there is a feeling that the executor is not communicating with the other interested parties. Lack of communication usually leads to suspicion and resentment. Regular discussions with the executor will allow you to be involved in the process. Breakdowns in communication lead to litigation.