

## Executor Selection

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Whom should I nominate as the Executor of my Will? Should I name my spouse? If I nominate my youngest child, will my older children resent me? What about co-Executors and successors? How many Executors should I nominate?

These are questions that every estate planner is accustomed to hearing after describing the critical role of an Executor in administering an estate. The Executor is responsible for managing every aspect of an estate – including filing probate paperwork, locating and safeguarding assets, obtaining appraisals of estate assets, paying debts and expenses, potentially hiring attorneys, accountants, or other professionals to assist in those efforts, and ultimately distributing the assets of the estate as directed by the Will. There is a personal element as well. The role also may involve managing the expectations and needs of grieving heirs.

In short, nominating an Executor bestows more than an honorary title upon a family member, friend, or trusted advisor. It enlists that individual for an assignment that may last for several years depending on the size and complexity of the estate.

Serving as an Executor is not for everyone. It is a job that requires a certain skill set. Those who are best equipped to handle the duties of an Executor typically are highly responsible and detail-oriented. They can set and meet deadlines. It can be helpful if an Executor has financial experience and/or familiarity with the assets of the estate, especially if you own or operate a business. It also can be a good idea to nominate an Executor (or one or more successor Executors) younger than yourself with the expectation that at least one of your nominated Executors will outlive you and be willing and able to serve.

How many Executors can I nominate? In theory, as many as you like, although this is not always advisable. While it is common to nominate co-Executors, naming multiple co-Executors may be cumbersome and problematic. For example, nominating multiple siblings who harbor old rivalries could thwart administration of the estate. But this could cut both ways: naming multiple siblings as co-Executors could exacerbate old rivalries or create new tensions where none previously existed; but naming one sibling over another also could have the unintended consequence of creating tension. (Consider: the sibling-Executor likely would have the ultimate say over who receives which “tangibles” in your house.) The decision often requires careful consideration of family dynamics.

Jurisdiction also may be a relevant factor to consider. Some jurisdictions impose extra burdens or

restrictions on who can serve as Executor. For example, the State of Florida presumptively disqualifies out-of-state Executors (called “Personal Representatives”) who are not close family members.

While many clients will name a family member or a trusted friend as Executor, some clients do not have someone who would fit the role, or no obvious successor – or simply would prefer to take family out of the equation (perhaps to avoid any risk of family tension, or to spare family members the responsibility). In such circumstances, a professional Executor such as an attorney or a bank may be the best option. A professional Executor should provide expertise, a high standard of care, and neutrality. However, professional Executors may come with additional expense. (Note: individuals, including family members, typically are entitled to charge commissions for serving as Executor. Professional Executors may charge their customary hourly rates or may have special rates for serving in that role. In some states, an Executor’s commission is set by statute.)

The selection of an Executor requires careful thought and consideration. Choosing the correct Executor(s) is critical not only to ensuring smooth estate administration, but also to provide you with the peace of mind that your testamentary wishes will be carried out smoothly and efficiently when you are gone.

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