



A GUIDE FOR DUTIES AS AN EXECUTOR

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This guide is intended for use by Active Duty service members, retirees, their families, and other personnel eligible for legal assistance from the Goodfellow AFB Legal Office. The information is general in nature and presented to assist those eligible persons in preparing for a legal assistance appointment with a professional in the legal office. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

Fact Sheet on Being an Executor

An executor (personal representative) is the person responsible for settling a deceased person's estate. As executor, your duties include inventorying, appraising, and distributing assets, paying taxes, and settling debts owed by the deceased. You are legally obligated to act in the interests of the deceased, following the wishes expressed in that person's will. If all this sounds a bit overwhelming, keep in mind that you can hire professional help - for example, an attorney to help with the probate process, and an accountant to file taxes. A probate court clerk can answer basic questions about the court procedure, and probate paralegals, although they cannot offer legal advice, can prepare documents as the executor instructs them, and file them with the court. The executor should hire someone only if that person has substantial experience in this field and provides good references. This pamphlet provides an overview of the executor's role.

Who can be an executor?

Any US citizen over the age of 18 who hasn't been convicted of a felony can be named the executor of a will. Some people choose a lawyer, accountant, or financial consultant because of his or her expertise. Others choose to appoint a spouse, adult child, relative, or friend, especially if the estate is small. Generally, a family member or friend expects little or no pay for settling the estate and is anxious to get things settled quickly and smoothly. However, keep in mind that death can bring out the best and worst in people and it is not uncommon for family disputes to erupt over estate matters.

Costs incurred by the Executor

Generally, an estate is responsible for paying the executor a fee. This fee may be specified in the will, or it may be determined by state regulation. The executor's fee may be waived. If the executor is an attorney, the law in most states prevents him or her from collecting both an executor's fee and an attorney's fee for legal advice on the estate. In Texas, the executor is entitled to 5% of the estate as a fee for his or her duties. Usually, an executor is entitled to be reimbursed from the proceeds of the estate for expenses incurred in settling the estate. For example, if you live in California and are named executor of an estate in New York, the estate is liable for your commuting costs.

Designation as the executor

Being an executor can be a lot of work. For example, taxes must be filed in a timely manner to avoid penalties. The executor has to follow up on many details and may also be called upon to help defend the terms of the will against squabbling heirs or unwarranted claims by outside parties. Because of the many responsibilities involved, it's wise to ask the person being named in a will if he or she is willing to serve as executor. If you've been named executor in someone's will but are unwilling to serve, you need to file a declination, a document declining your designation as executor, with the court. That's why you should name an alternate executor in your will—a person who can take over for the executor if necessary. If no contingent executor is named, the court will appoint one.

Responsibilities of an Executor

As executor, your first duty is to initiate probate, the formal process of proving the authenticity of the deceased person's will and confirming your assignment as executor. You'll need to file an

application to appear before the probate court (found in the government listings of your local telephone book).

Next, you need to notify all parties named as beneficiaries that you have applied to the court to probate the will. When you appear in probate court you'll need the original signed will and a certified copy of the death certificate. You should also be prepared to pay any court costs, which are chargeable to the estate. The job of the probate court is to decide the validity of the will, generally a routine affair. However, parties may challenge or contest the will at this time. A person, who challenges a will, or part of a will, must file an objection with the court within a specified amount of time (check your state laws). Challenges to wills can be time-consuming and costly to the estate.

Once the will is determined to be valid by the probate court, you may begin to pay taxes or other claims against the estate and distribute assets to the beneficiaries (if the will is found to be invalid, the probate court will order that creditors and taxes be paid). Then the remainder of the estate will be distributed in accordance with state law. If the estate (including certain lifetime gifts) is greater than the applicable exclusion amount shown in the table below, the executor is required to file a federal estate tax return. A state estate tax return may be required, even if a federal estate tax return is not required, depending on the state's tax laws. Currently, Texas does not require a state inheritance tax return on estates with a date of death on or after Jan 1, 2005. The applicable Federal exclusion amounts are as follows:

Year of Death	Filing Requirement
2020	\$11,580,000
2021	\$11,700,00
2022	\$12,060,000
2023	\$12,920,000
2024	\$13,200,000 (estimate)

If a federal estate-tax return is required to be filed, the executor normally waits for what is called the closing letter from the IRS before making distributions to the beneficiaries. This tells the executor that all federal estate taxes have been paid. It is best to contact the IRS or the state if you have any questions or concerns about whether estate taxes must be paid. Your last step is to finalize the estate by filing papers with the probate court. This usually involves providing the court with copies of notices to concerned parties, tax returns, and bills paid. The executor must also provide evidence of distribution of the remaining assets, such as signed receipts from the beneficiaries. When the court recognizes the completion of the probate process, you are released from further responsibility as executor.

The Executor's Checklist

Settling an estate, even a simple one, involves plenty of loose ends and details. The following list will give you an idea of the many things you may need to do as executor. Use it as a guide, adding or deleting items as needed.

- Locate the will
- Obtain a lawyer or accountant, if necessary
- Apply to appear before the probate court
- Obtaining the grant of probate or letters of administration
- Notify beneficiaries named in the will
- Determine the debts of the deceased
- Arrange for publication of notice to creditors and mail a notice to each known creditor
- Send notices of the person's death to the post office, utilities, banks, and credit card companies
- Inventory all assets, assign values, and have them appraised, if necessary
- Collect debts owed to the estate
- Check with deceased's employer for unpaid salary, insurance, and other employee benefits
- File for Social Security, civil service, or veteran benefits
- Contact nearest military installation and obtain phone numbers for the Personnel Office and Mortuary Affairs Office to determine any benefits
- File for life insurance and other benefits
- File city, state, and/or federal tax returns
- File state death and federal estate tax returns
- Pay valid claims against the estate
- Distribute assets and obtain receipts from beneficiaries
- File papers with probate court to finalize the estate

For your own protection, you should keep a copy of all records for at least two years. Seek the guidance of a professional if you need help in settling the estate. Taxes and probate can be complicated issues and mistakes will delay the closure of the estate and the distribution of inheritances.

NOTE: This guide is intended for general informational purposes only and does not constitute legal advice. Given the complexity and variability of probate and estate laws, it is advisable to periodically verify this information and consult with a legal professional for the most current and applicable advice. Due to the limited capacity of JAG attorneys, we can only provide basic guidance on these matters. We strongly recommend seeking out an attorney who specializes in probate for more comprehensive assistance. If you have any questions or need to schedule an appointment with a legal assistance attorney, please call the Legal Office at 325-654-3203.

References:

Texas Probate Code: [V.A.T.S. Probate Code § 72-94, 241, and 378B](#)

IRS Estate and Gift Tax: <https://www.irs.gov/businesses/small-businesses-self-employed/whats-new-estate-and-gift-tax>

Texas Inheritance Tax: <http://www.window.texas.gov/taxinfo/inherit/>