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PERSONAL FINANCE

You Will, Won't You?

It's flattering to be asked, but being executor of an estate is time-consuming—and risky

For years, Ellen McLaughlin helped her elderly mother make investment decisions, pay bills, and prepare tax returns. Since her mother died in February, McLaughlin is still doing all that -- and more. As executor of her mother's estate, McLaughlin has worked with attorneys, realtors, insurers, appraisers, and accountants to sell a house, value a stake in a privately held company, transfer assets, and, of course, prepare tax returns. Even though her mom had simplified matters by transferring assets to a trust, McLaughlin, a financial planner in Apollo Beach, Fla., devotes more than 15 hours a week to her job as executor. "Even with my training, I've found it a challenge," she says.

McLaughlin is dealing with a well-organized estate and cooperative family members. If an estate is a mess and the heirs are at war with each other, acting as executor can be the job from hell. Just ask Joseph Butler, an FAA safety inspector from Somers, Conn., and co-executor of his grandmother's estate. Four years ago he discovered that his grandmother's will and several valuable antiques were missing from the Worcester (Mass.) home she had bequeathed to the entire family. Since then, the estate has been tied up in legal battles, including one in which Butler hired a handwriting expert to debunk a will a cousin produced that named the cousin's mother sole heir. "It's been a real headache," says Butler. The home will soon be sold, he says, and the proceeds divided according to state law, which governs estates without wills. Twenty-seven grandchildren will share the money, Butler adds, with the cousin's share docked for various expenses.

If asked to be an executor, you may feel flattered, or loath to turn down a loved one. But think carefully before accepting. Executors are entitled by law to be paid, but the work is generally tedious and time-consuming, even if you farm some of it out to professionals. Moreover, if you make mistakes, you may damage relationships with other heirs or even be held personally liable.

An executor's duties often begin with paying the funeral bills and end when all bequests have been distributed. Basic responsibilities include maintaining the estate's property. That means making sure valuables are safe, the lawn is mowed, and the utility bills are paid, as well as dealing with any lingering legal matters.

Executors-in-waiting can head off problems by talking about the estate with the owner while the person is still alive. If you think the job might be too much to handle, ask the estate owner to recommend professionals you can hire. If there's a co-executor with whom you don't always get along, request that an objective third party, such as the family accountant, be appointed to serve as a tiebreaker, says Leonard Witman, partner at Witman Stadtmauer & Michaels in Florham Park, N.J.

KEEPING THE PEACE

Next, sit down with the estate owner and draw up an inventory of all debts and assets. Make sure you know where all important documents are stored -- from bank and brokerage statements to insurance policies and deeds. Being organized will help you meet key deadlines. For example, since estate taxes are due nine months after death, you may need to be able to quickly identify which assets to sell to raise cash. And the better prepared you are, the less likely you'll be to make mistakes. That's critical because executors found by a court to have mismanaged an estate -- by, say, selling assets at fire-sale prices or turning a blind eye to unsuitable investments -- can face steep penalties, says Nancy Levin, a partner at Evans, Latham & Campisi, a San Francisco law firm that specializes in trust and probate litigation.

It's also important to find out how the property is to be divided. One way to handle potential disputes: Ask mom or dad to break the news. Disappointed heirs may be less likely to lash out if notified before the estate owner's death about an inheritance than they would be in the emotional aftermath. "The easiest way to alleviate conflict is to keep everyone informed," says Susan Porter, managing director at U.S. Trust. M. Shannon Lunsford of Louisville, Colo., recalls that although his sister was upset when she learned she was written out of their stepfather's will, the fact that she had received advance notice helped keep the peace. "She was still hurt, but we were able to smooth things over a bit."

Most wills leave executors to divide the majority of personal items. As a result, executors may also have to referee disputes. Arguments over a watch or a ring "are often really over who mommy loved best," says William Forsyth, senior fiduciary counsel at Bessemer Trust, who once mediated a fight over a copy of an etching worth just $15. "Only the threat of going to court persuaded the parties to relent," he says. If you anticipate bickering over possessions, ask the donor to specify who should get what -- either in the will, where the instructions are binding, or in a letter, advises Joanne Johnson, managing director at JPMorgan Private Bank (**JPM**).

Since executors can be held personally liable, it's also important to protect yourself. For instance, if an investment portfolio is concentrated in a single stock, you may want to limit risk by diversifying, says Douglas Moore, head of estate and charitable planning for Citigroup Private Bank (**C**). Sometimes heirs prefer to keep these large holdings exactly as their parents did. To be prudent, try to obtain the approval of all the interested parties, says attorney Levin.

Fees can also be a source of conflict. Unless a will states otherwise, the executor is entitled to payment. Fees vary by state, and they can add up: In New York, they are 5% on the first $100,000 of the estate, 4% on the next $200,000, 3% on the next $700,000, 2.5% on the next $4 million, and 2% on the rest. On a $10 million estate, that comes to $234,000.

Since fees reduce the size of an estate, other heirs may resent you for taking one. Still, if estate tax is due, the family will save on taxes by paying an heir an executor's fee, says Witman. Why? While the executor will owe personal income tax on the fees, the highest federal rate is 35%. But if the money remains in the estate, the estate tax will claim 46%. You can always agree to compensate other heirs: Just be sure not to give each more than $12,000 a year or you'll trigger a gift tax, says M. Holly Isdale, head of Lehman Brothers Wealth Advisory group (**LEH**).

Once in the job, keep a precise accounting of the estate's affairs and a record of the time you spend, as well as the reasons for your decisions. Mom or dad may have trusted your judgment, but there could be a disgruntled relative who doesn't.

By Anne Tergesen