

Five Big Mistakes Executors Make—and How to Avoid Them

Being named the executor of a family member's (or other loved one's) estate is, in many ways, an honor. The decision shows that the person saw you as a highly trustworthy, capable person of integrity.

But it's also a major responsibility that can quickly become a burden if you aren't set up to do your job properly. The fact is, administering an estate comes with plenty of potential pitfalls that can threaten your loved one's wealth—and your peace of mind. That goes double if the death is unexpected and leaves you reeling emotionally as you try to take on the legally required duties of an executor.

The good news: You can take steps to avoid some of the biggest mistakes that executors often make and to ensure that the process goes as smoothly as possible.

First, a few basics. At death, everything a person owns becomes part of his or her taxable estate. Estate administration is the process of managing the estate at this time—including paying off debts and any taxes due, and distributing the property to heirs in accordance with the deceased person's wishes (or by state law if the deceased did not leave a will).

The executor is the person responsible for estate administration. If you have been named the executor of an estate, you are legally required to wrap up its affairs, arrange for the payment of any income and estate taxes, and distribute the assets of the estate.

Three reasons to use a professional

To avoid potential mistakes, consider consulting with a professional during estate administration. Here are three reasons why:

- 1. To file the proper forms to protect the estate.** Estate administration requires familiarity with the complex process, applicable statutes and tax forms. To protect an estate against costly mistakes, such as failing to file a state or federal estate tax return, consider engaging a professional to help navigate the administration process.
- 2. To be protected.** There are many actions you take as an executor that can put you at personal risk. To avoid these at-risk distributions, a professional can assist you by ensuring state probate and tax formalities and federal tax law are fulfilled.
- 3. To protect the estate's value.** If you don't properly protect the estate assets' value, you could be in breach of your fiduciary duty. Consulting with a professional will help you to properly react to market conditions as they change. These actions can include selling a home, performing an estate sale or engaging a financial professional to manage the investment portfolio.

All too often, executors without quality legal guidance make mistakes during the process of carrying out these responsibilities—mistakes that expose the estate to litigation, increased tax liability and other potentially serious consequences.

FIVE MISTAKES TO AVOID

Mistake #1: Making distributions too early

As executor, you are liable for the estate and its distributions. If you make distributions from the estate—handing out money to family members, for example—before taxes and other liabilities are paid, you are personally responsible. The same is true if you make disproportionate payments to family members. Such distributions, known as “at risk” distributions, should be avoided. That’s not to say you can’t make these distributions. But a miscalculation or unexpected claim puts you at risk—if, say, you need to get money back from a family member to pay a tax bill but that person has already spent it all.

Mistake #2: Failing to make the “portability election”

The concept of portability means a surviving spouse can make use of both his or her individual federal estate tax exemption and the unused exemption of the first-to-die spouse. Because every decedent is allowed a federal exemption of \$11.2 million in 2018, this allows a married couple to shelter a combined \$22.4 million from any federal estate tax liability.

However, this estate tax exemption can often cause a problem for surviving spouses when the entire estate of the first-to-die spouse is sheltered from estate tax. This key requirement is commonly overlooked because you have to ask for it. Even if no estate tax is due upon the death of a first-to-die spouse, the executor of the estate must elect portability by filing an estate tax return on Form 706 within 15 months of the death, with the filing of a proper extension. And if you don’t use it, you lose it.

Mistake #3: Failing to properly advertise the estate

The appointment of an executor and the existence of the estate may need to be advertised in a local newspaper. If there are debts owed, creditors need to be notified so they can make claims against the estate if necessary. Each state has different laws that govern the advertisement of an estate. Failure to satisfy a notice requirement may expose you personally to the estate’s creditors.

Mistake #4: Failing to liquidate securities through a market downturn

As executor, you would be responsible for managing the estate’s assets—including any stock portfolio. While you don’t necessarily need to have the financial and business acumen of Warren Buffett, failing to monitor the markets and estate investments could seriously damage the estate’s value. As an executor, you’re also a fiduciary—someone who is legally required to act in the best interests of the heirs or other beneficiaries of the deceased person and to follow the instructions the deceased person spelled out for you. That means it falls on your shoulders to ensure the estate’s financial health. That job may involve buying and selling stocks or other securities in response to bull and bear markets.

Mistake #5: Failing to properly conclude the estate

Executors who have properly distributed most of the estate's assets often fail to properly close the estate. This may involve filing a family settlement agreement with the court showing that all beneficiaries agree that they received their share of the estate or going through a court accounting process where a judge ultimately approves of the distributions. It is also recommended to work with an accountant (or an estate administration lawyer in more complicated cases) to ensure all tax matters are concluded before the estate is finished with administration.

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