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## The Biggest Mistakes Executors Make

Settling an estate is often a thankless task. Here's how to avoid some common pitfalls.



PHOTO: PAUL GIAMOU/ISTOCKPHOTO

By **VERONICA DAGHER**

Jan. 31, 2016 10:01 p.m. ET

Serving as an estate executor isn't for the faint of heart.

It can seem like an honor, at first. When people make out their wills, they typically name a trusted person as their executor, who then has a legal responsibility to distribute their property according to the wishes of the deceased, and make sure all debts and creditors are paid.

But in addition to lots of paperwork and deadlines, the job often comes with a minefield of family issues. And worst of all, executors can be sued.

Here are some of the biggest mistakes executors want to avoid:

### Paying bills too quickly

Often an executor will start receiving the deceased's mail and paying credit-card

bills and other invoices as they arrive, says Debra Doyle, shareholder at the law firm Greenberg Traurig in Chicago. They do this, Ms. Doyle says, in the mistaken belief that timely payment is required.

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In truth, such bills are well down the list of priorities for payment. Paying these debts before all other classes is a breach of fiduciary duty and potentially exposes the executor to personal liability, Ms. Doyle says.

Ms. Doyle recalls one estate that carried a significant federal income-tax liability the executor knew nothing about. Once the tax bill became known, there wasn't enough money left in the estate to pay it since the executor had first paid other debts.

In cases like this, the executor potentially has a personal liability to pay the outstanding tax liability because the executor improperly paid estate assets to satisfy lower-class creditor claims before settling the IRS claims, Ms. Doyle says. In some cases, the IRS may be willing to settle with the executor, but not in all cases, she adds.

Before paying any creditors, executors should consult with a trust and estate attorney to understand the priority of payments. For example, funeral expenses and federal and state taxes take priority over other debts such as the cable bill, she says.

In addition, the executor should consult with the estate's accountant for an estimate of all tax liabilities, and consult with the estate's attorney to estimate all

administration expenses and payments, if any, due to the surviving spouse or children under a spousal or child's award from the probate court.

Even after setting aside sufficient estate assets to satisfy the highest priority creditors, executors should consider satisfying all other debts and creditors only after the entire estate administration has been completed and all tax returns filed and taxes paid. This process may take nine months to two years, depending on the complexities involved, Ms. Doyle says.

## Playing the market

Some executors are tempted to invest an estate's assets—in an attempt to increase the value of the estate—during the settlement process. That can be a risky tactic. For one, an executor generally has no obligation to increase the value of an estate's holdings, even if the distribution to heirs is prolonged.

### Tough Duties

The most difficult part of serving as an executor (among those who served)

- 29% Commitment of time required
- 28% Having access to and knowledge about records and information
- 25% Having sufficient legal/financial knowledge
- 25% Managing expectations/disagreement among heirs or beneficiaries
- 23% Filing tax return
- 14% Paying bills or debts owed
- 13% Distributing assets without clear instructions from the deceased
- 13% Determining the value of assets
- 10% Not compensated adequately for time
- 9% Sharing decision-making with co-executor

### Up for the Job

What people considered in naming an executor and/or trustee

- Trustworthiness 78%
- Financial skills and knowledge 52%
- Objectivity and fairness 52%
- Organizational skills 34%
- Health or longevity 25%
- Emotional state 19%
- Time availability 18%
- Mental health 15%

Source: 2014 U.S. Trust Insights in Wealth and Worth survey

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It's especially risky when an estate plan calls for giving a trust or individual a "pecuniary" amount, which is a precise amount based upon the value of assets reported on the estate tax return, says Hugh Magill, Northern Trust's chief fiduciary officer. That specific amount must be distributed to the trust or individual, regardless of

fluctuations in the value of the assets before funding.

One father named his three adult sons as executors under his estate plan, which included a pecuniary formula for funding the trust for the surviving spouse, with the balance of the estate passing to the sons. The estate consisted largely of high-quality bonds, which the sons sold shortly after their father's death to invest in a much riskier portfolio of small-cap stocks, which they hoped would grow, Mr. Magill says. But the value of those stocks declined more than 50%

before the spouse's trust was funded at the full amount required. The sons' resulting share bore the entire decline in the stocks' value, resulting in a loss to them of more than \$5 million.

If the decline in the stock portfolio had been so large that the spouse's trust could not be fully funded, the sons' actions could have subjected them to a lawsuit for breach of fiduciary duty, he says.

Don't "play the market" during the estate-settlement process, Mr. Magill says. In most states, the executor has an obligation to conserve, but not to increase, the value of the assets during estate settlement.

## Mishandling real estate

Real estate is often one of the hardest assets to administer, says Ms. Doyle. One beneficiary might be living in the house, while another might want it sold quickly. The executor must decide the listing price and the commission to pay the real-estate agent, Ms. Doyle says. Unless amicable decisions can be reached among all of the beneficiaries, the executor may be forced to seek probate-court assistance, she says.

In addition, real-estate agents may recommend certain improvements to the property before the sale. Before authorizing any improvement, the executor needs to consider whether he or she is authorized to spend estate assets to make such improvements.

Executors also should be careful not to hold on to a house for too long. Insurance companies don't like to insure empty houses for extended periods, Ms. Doyle says. If the home is vacant, the executor also needs to beware of maintenance issues. If a pipe breaks, significant damage can be done before anyone discovers it. Repairs can cost thousands of dollars and delay a property's sale.

Executors should maintain the homeowner's insurance on the decedent's house in case of a fire or accident, says Avi Kestenbaum, partner at the Meltzer, Lippe, Goldstein & Breitstone law firm in Mineola, N.Y.

## Losing tangible assets

Executors sometimes don't realize that assets—tangible and intangible—belong to a new entity, the estate, as of the date of death. It's the executor's responsibility to keep the assets safe while arrangements are made to distribute them according to the decedent's plan, says Paulina Mejia, managing director and head of wealth strategies at Atlantic Trust in New York.

Ms. Mejia says she knew an executor who was a family friend of the deceased and didn't realize the son was helping himself to his late father's works of art and valuable items while the estate was being settled. This caused many problems, because the will bequeathed the art to a museum. The executor could have been sued, she adds. The executor should have immediately taken an inventory of the assets and arranged to appraise and securely store the art until it was ready to be distributed to the museum, Ms. Mejia says.

Executors must find all of the deceased's assets and sort through all of their personal belongings to account for the entire estate, says Victor Ngai, an executive at Guardian Life Insurance Co. of America in New York. They also may need to get security for the home.

One other word of advice from Mr. Ngai: Don't succumb to family pressure to make distributions too soon. It may result in insufficient assets to pay off creditors, he says.

"Money has a habit of changing the attitudes of a lot of people," Mr. Ngai says, "but an executor's job isn't simply to distribute wealth."

*Ms. Dagher is a Wall Street Journal reporter and host of the Watching Your Wealth podcast. Email: [veronica.dagher@wsj.com](mailto:veronica.dagher@wsj.com).*

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