

Capital District Senior Spotlight: Legal Chat

Q: I'm in the process of drafting my will and am stuck on the question of naming an executor. I'm inclined to name my wife, but she is not very sophisticated when it comes to finances. Does it matter?

A:

With a last will and testament

, testators detail their final wishes in relation to the distribution of their assets. It is the job of a will's executor to make those wishes come true. So for your own peace of mind, it is important that you do not appoint someone with questionable management skills or a poor relationship with your family. Sometimes a spouse is named an executor and a child as an alternate. Attorneys and banks also make good candidates.

Ultimately, an executor is responsible for gathering the assets of a decedent's estate, otherwise referred to as "marshalling," and making sure all debts, expenses and taxes are paid. Executors are also in charge of liquidating and distributing the assets as quickly as possible. This process could take anywhere between six and 18 months, and the executor will need to petition to a surrogate court to obtain the letters of testamentary that grant him or her the legal authority to act as a decedent's personal representative and carry out these duties.

To help narrow your list of candidates, you should know New York law states the following people cannot be executors: an infant, a felon, an incompetent. Substance abuse, dishonesty and improvidence are a few traits that could disqualify people for the job. Generally, literate individuals at least 18 years of age or any bank or trust company can serve as an executor. That is not to say an executor must be an expert on the probate process to fulfill their duties. Executors can seek the assistance of an attorney in this complex process – and that attorney does not have to be the one who drafted the will for the testator.

The executor should also be a good multitasker because he or she will have to juggle multiple jobs, from filing various tax forms or insurance claims, to selling or transferring property. Their inability to perform these tasks expediently could expose them to certain liabilities if, for example, the estate suffers because an asset was held for too long a period or cash was retained too long without being put in an interest-bearing account. Another important question is whether the person you have in mind is up for the job of executor. A person named executor, after all, can renounce his or her right to receive letters of testamentary or a court could deem him or her unqualified.

It is up to you to decide how much – if anything – an executor should know about your will's provisions prior to your death. To simplify the job of the executor, you could prepare for him or her a letter of instruction. This document should list the contact information of family, friends and financial agents, the location of important documents, along with an inventory of assets and liabilities. The executor and a family member should know where to find this letter of

instruction. For individuals who complete the probate process and successfully execute the will, state law allows them to be compensated in accordance to a statutory commission schedule.

People interested in preparing a will

should consult an estate planning attorney, who can prepare the document and discuss options for naming an executor.

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