

How to choose an executor -and a backup plan

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Body

The right executor can determine how smoothly, or disastrously, an estate is distributed. It's a responsibility-rich role and akin to other hiring processes, experts say it's worth taking the time to make sure the right person has the job.

From consent to character to family dynamics, there are a number of factors to consider before appointing an executor.

While some simply require ticking the box of a legal qualification, others require a more in-depth analysis of interpersonal relationships. In some cases, experts say a neutral third party can prevail as the safest option.

Executors will play a key role in distributing what's predicted to be the largest generational wealth transfer in Canadian history, according to Chartered Professional Accountants of Canada. An estimated \$1-trillion of wealth will pass between baby boomers and their Gen X and millennial heirs between now and 2026, the umbrella organization for accountants says.

There are a few practical considerations that can help narrow down candidates for executor, said Aaron Pearl, a partner at Clark Wilson LLP. For example, they should be over the age of majority (which is 18 or 19, depending on the province or territory), likely to be alive and capable when the will maker dies and, preferably, live somewhat close so they can appear in-person for certain tasks such as clearing out a property. Also, if they live outside of Canada, they may be subject to additional tax-reporting obligations.

Just as important as these practical qualifications, if not more, is how trustworthy they are.

"You want to be able to trust that person or those people with stepping into your shoes, financially, to deal with your financial and legal affairs," he said.

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Ideally, an executor also has some general financial or legal wherewithal, or is at least resourceful enough to find someone who does, Mr. Pearl said.

"Even finding a lawyer requires some level of resourcefulness."

The most common mistake Mr. Pearl sees people make when picking an executor is not closely considering existing conflicts, especially if there's more than one executor, and being optimistic that existing tension won't continue or be exacerbated after death.

"Conflict that exists is probably just going to be more inflamed and more intense after, when there's money and tasks involved," he said.

Depending on the situation, Aubrie Girou, a partner at Alexander Holburn Beaudin and Lang LLP, said a will maker could appoint a professional trust company as executor to mitigate complicated family dynamics and keep things moving smoothly.

"They don't have a horse in that race. They're not going to prefer one beneficiary over the other. They're going to take their obligations seriously," she said.

However, Ms. Girou said cost can be a drawback in hiring a professional. For a more cost-effective alternative, she said a willing friend or other neutral third party may also work to avoid appointing a family member or someone else with a stake in the estate.

Whoever is being considered for the role, Ms. Girou said it's critical that they're made aware of their appointment before it's made. Professional trust companies will require certain administrative powers and a fee schedule, and individuals should be given the chance to consent to the role.

"The will maker can risk an appointment without notice, but it does increase the risk for potential disputes," she said.

Every good will should also include an alternate executor, Ms. Girou said, because life can be unpredictable.

"Not appointing an alternate ignores that fairly common reality that the will maker's first choice dies, is incapable at the time or declines to act because of a variety of reasons."

Notes

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