Choosing your executor and trustee

You know that it's vital to make a proper will and keep it up to date. No less critical is the need to select your executor or personal representative with care.

You may believe that any friend or relative whom you might select could do the job. Perhaps so. But all too often the horror stories one hears about botched-up estates prove to be all too true.

Don't underestimate the weight of an executor's burden. When an estate has any substance, the task of settlement can prove overwhelming for anyone who lacks the time, experience and specialized know-how required to do the job right.

Complexities

The ideal executor has been described as a combination of detective, bill collector, investment analyst, bookkeeper, property manager, business executive, tax specialist, corresponding secretary and financial counselor.

The detective work may involve both a search for estate assets and for key people, such as long-lost relatives or witnesses to the will.

An estate's representative must locate and safeguard all assets, pay those creditors whose claims are valid and collect all debts owed to the estate.

From an investment standpoint the executor's primary task is to preserve estate values. Usually, some securities must be sold to raise money for cash bequests, expenses and taxes. The executor must decide which securities to retain, which to sell and when to sell.

Along with difficult decisions comes a heavy load of paperwork. Careful records must be kept of all transactions, all income received by the estate, and all disbursements.

If you're "in business," your executor will be, too. This is one of the most demanding aspects of estate settlement. Even when the terms of a will call for an enterprise to be sold, it must be kept functioning in the meantime. Orders must be filled, sales efforts maintained.

An executor must file final income tax returns for the deceased and returns reporting estate income. State, federal and, perhaps, even foreign death tax returns may be required.

The voluminous federal estate tax return must be prepared when an estate exceeds the ”applicable exclusion amount” ($1.5 million in 2005). Even if no tax is due because of deductions for assets left to the surviving spouse or to charity, accurate tax valuations are essential.

Commonsense alternative

It is easy to see, then, why it is so often unfair to place the burden wholly on the shoulders of a spouse, relative or friend. There is a commonsense alternative: naming a corporate executor.

If you desire, your will can designate a trust institution to settle your estate. If you feel that participation by a family member or other individual is essential—because of that individual's insights into your beneficiaries' personal needs, perhaps, or special knowledge of your business—you may name that person as coexecutor.

Choosing a trust institution makes good sense for a number of reasons:

- An individual executor may move away, become ill or incapacitated or turn out to need an executor before you do.
- Professionals are trained and experienced in handling estates. They won't be learning the job at your family's expense.
- In human terms a corporate executor will be helpful but never play favorites.
- Fees for estate settlement generally are comparable to what an inexperienced individual might receive. The net cost of professional estate settlement services actually is often lower.

Choosing your trustee

Estate settlement ends when the executor completes distribution of the estate and renders a final accounting. Estate trusteeship begins when funds to be held in trust are distributed to the trustee and ends only when the trust has run its course. A trust designed to save estate tax at the death of a relatively young beneficiary might last for many decades. A charitable trust might be designed to last "forever."

Because experienced investment judgment plus the ability to serve a long time if need be are such important characteristics for a trustee, most people readily understand the advantages of naming a trust institution. Here's one added point to consider:

Although the job of settling an estate and the job of providing continuing management of securities and other assets are technically distinct, in practice the two are closely linked. For example, an executor's decisions concerning what securities to sell may really depend upon which securities are best to keep as trust holdings. Also dealing with one institution from the start is easier on the family.

By making your will, you do more than control how your estate will be divided. Your choice of an executor and, perhaps, trustee determines who will manage your estate. A wise choice can save your beneficiaries needless worry.

(June 1999)

(revised February 2005)