

# Who should settle your estate and why?

The following is a fictitious account, with fictitious names, but one that, nevertheless, *could* be true.

Stephen Smith married three times. He had a daughter, Sara, with his first wife, two sons and a daughter with the second. His third wife wasn't much older than his first child. At his death Stephen's beneficiaries included his surviving spouse, the two ex-wives and the four children. No one knew why, but Stephen's will named Sara as the executor of his estate. He didn't even mention it to her in advance. Perhaps it was because she was a successful lawyer, and he had confidence in her knowledge and ability. Or perhaps it was simply because she lived in another state, so Stephen didn't quarrel as much with her as he did with other family members.

An even bigger mystery was why Sara accepted the appointment as executor (called a *personal representative* in some states). Her practice area wasn't trusts and estates. She specialized in defending against employment discrimination claims. But Sara evidently felt that she could handle the job, and perhaps she felt honored by the nomination or felt that she owed it to her father to see to the execution of his last financial wishes.

## What went wrong

Amateur executors often make tax mistakes. Filing dates for death taxes don't generally follow the calendar. A final income tax return will be required for the decedent, as well as fiduciary income tax returns. These formalities didn't trouble Sara. She was organized and familiar enough with the procedures to handle these filings. But there *were* plenty of surprises.

- There was no inventory of Stephen's assets, no listing of all his accounts. In fact, Stephen himself seemed to have forgotten some of the insurance policies and smaller bank accounts that he had set up over the years.
- One ex-wife challenged the will, claiming that it failed to provide for her as required by the divorce decree.
- Claims by "business partners" cropped up with regularity. None of them were legitimate, but considerable time was devoted to defending the estate from such attacks.
- Family harmony lasted for about three months. Then everyone began accusing Sara of favoritism. They also objected when she charged the estate for the value of her services as executor. They demanded that her inheritance from her father be payment enough.
- Family tension escalated further when Sara, without having it appraised first, allowed her half-brother to have some artwork that Stephen had kept in his office. Sara assumed that the value was nominal, but later discovered that the artwork was worth thousands of dollars.
- Sara had assumed that she could handle much of the work over the telephone, but that was not the case. Many in-person visits were required to move the settlement process forward, and Sara's own law practice suffered as a result.

An easy conclusion: Had she known ahead of time how much aggravation would be involved, it's likely that Sara would have declined the "honor" of settling the estate.

## The better choice

The more people learn about the demanding duties associated with estate settlement, the more clearly they see why it's so often unfair to place the burden wholly on the shoulders of a spouse, adult child, relative or an old friend. A corporate fiduciary offers a commonsense alternative for the settlement of an estate.

One who feels that participation by a family member or other individual is essential—because of that individual's insights into the beneficiaries' personal needs, perhaps, or special knowledge of business dealings or estate assets—may name that person as coexecutor.

## Ten advantages of the corporate fiduciary

A corporate fiduciary offers benefits that no individual can hope to match when it comes to estate settlement.

- *Knowledge.* Estate administration can be complicated. State laws govern the process, and unfamiliar tax laws come into play as well. A variety of filings will need to be made on a timely basis.
- *Experience.* Every estate presents a unique mix of assets, from stocks and bonds to life insurance to investment real estate to family business interests. The executor must know how to handle everything.
- *Investment capabilities.* Decisions on what to buy and what to sell must be made on a foundation of sound understanding of the current financial markets' situation.
- *Objectivity.* All family members need to feel that no one is unduly favored, and that all have equal access to information.
- *Sensitivity.* Estate settlement is also a time of grief and adjustment, and the executor needs to be responsive to concerns of the beneficiaries.
- *Availability.* The executor must be available when needed, not on vacation or attending to other business.
- *Permanence.* No one knows when the executor's services will be needed—many persons have outlived their nominated executors. The corporate fiduciary will be ready to serve at any time and will be able to complete the job of estate settlement, no matter how long it takes.
- *Financial strength.* In the event of errors leading to financial liability, the executor should possess the resources to make good.
- *Administrative and operational capabilities.* Estate settlement requires accurate communications, meticulous recordkeeping and attention to detail.
- *Full service.* Estate settlement expenses may be excessive if a personal representative must hire outside help in order to deal with taxes, investment and other specialized matters.

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Making a will is about more than controlling how an estate will be divided. The choice of executor, nominated by the will, determines who will manage the estate. A wise choice saves beneficiaries needless worry as it enhances family financial security.

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Any developments occurring after January 15, 2007, are not reflected in this article.