

(http://ads.lifehealthpro.com/RealMedia/ads/click_lx.ads/www.lifehealthpro.com/markets/senior-market/952157579/Position3/default/empty.gif/547a667a6356642f3647344143444452?x)

FILED UNDER: MARKETS, SENIOR MARKET

5 mistakes estate executors make

Naive estate executors can quickly get in over their heads

AUG 24, 2016 | BY KRISTEN BECKMAN



Failing to recognize and plan for these executor pitfalls can put an estate in jeopardy. (Photo: iStock)

Acting as an executor, or fiduciary, in the **administration of an estate** is an important role that comes with plenty of responsibility.

People often choose a spouse, adult child or other family member to serve in the role by attending to their last wishes and finalizing their estate. Knowing they've left their affairs in the hands of someone they trust can provide a measure of peace when contemplating their eventual death.

But settling an estate can be fraught with pitfalls, mostly unforeseen. These problems can be confounded when the person appointed to settle a decedent's estate is also dealing with grief or sometimes even shock if the death was sudden or unexpected.

Following are five common mistakes executors make and how to avoid them.



Accessing digital assets may be necessary for executors to perform their duties, but doing so could land them in hot water. (Photo: iStock)

1. Accessing digital assets

Society's dependence on **digital tools** is increasing, and that extends to financial, business and personal relationships and transactions. Some studies estimate the average person has 90 online accounts, ranging from social media to online banking. But people often don't consider what will become of those accounts and the information they store after they die.

Those who are left to settle a person's estate may need access to digital accounts, but having the login information isn't enough. There are legal implications surrounding access to a decedent's digital accounts, and an executor could be committing computer fraud if he or

Fiduciaries are responsible for performing their state-mandated guardianship and/or conservator and estate administration duties, which include protecting, collecting, conducting inventory, and distributing assets to decedents. However, most state statutes do not specifically grant fiduciaries access to digital accounts, says Kirsten Waldrip, a professor of estate planning and taxation at the College for Financial Planning and a private practice estate planning and administration attorney, in a recent white paper titled "Accessing digital assets in an estate: What Fiduciaries need to know."

Prior to the rise of digital, executors and other fiduciaries could legally collect physical assets about the decedent without fear of violating privacy laws.

With the development of paperless statements, the fiduciary must now play a guessing game as to where the decedent had property and how to access such property and statements. It is the legal access to this digital property that is the current cause for concern for fiduciaries, as online providers could charge fiduciaries with illegal computer hacking.

The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) aims to fill in gaps created by the digital explosion by allowing a fiduciary to carry out his or her legal duties for a decedent. Eighteen states have adopted the act; 14 states have introduced it for discussion.

Estate plans also should be updated to include language pertaining to access of digital assets, says Waldrip.

When updating the will, trust and/or power of attorney document, it is important to consider who will serve as the fiduciary to collect this information, since the fiduciary will have access to the content of the individual's digital accounts, unless restricted. A few less-formal measures can assist a fiduciary in this process, including keeping a log of online accounts and their associated usernames and passwords. This log, while it generally should not be written into an estate plan for privacy purposes, should be kept with estate planning documents, says Waldrip. The drawback of this is updating the log every time a password is changed.

Related: What (and why) you need to know about digital estate planning



Even simple estates can be complicated and executors need to know when they are in over their head. (Photo: iStock)

2. Not knowing when to ask for help

One significant misstep executors tend to make is not realizing when they are in over their head, said Adelina Kieffer, senior vice president of Bryn Mawr Trust, which specializes in estate planning and trusts.

“There are a lot of duties an executor takes on,” said Kieffer. “You become a fiduciary and are held to a high standard of care. Sometimes executors think they can take it all on and then find out they are in over their head. You need to know when to call in someone to help, like an estate attorney, or a CPA.”

Often executors think they are doing the right thing by not hiring an attorney in order to save money. But figuring out the legal and administrative intricacies of settling an estate is frequently too complicated for the average person.

Executors are held to a high fiduciary standard. Not only should the person crafting the will take this into consideration when appointing an executor, but the potential executor should

provide the support the executor might need.

In his book "Blood & Money," elder law attorney P. Mark Accettura says fiduciaries should not try to administer estates and trusts without professional help.

"Engaging the services of an accountant, financial advisor, realtor, and a qualified attorney insulates the fiduciary from liability, eases the burden of administration and assures compliance with all applicable laws and regulations," he writes. "Funneling communications through the attorney also insulates fiduciaries from information-hungry beneficiaries who can torment a busy fiduciary."

Related: Estate planning for elderly clients: weighing the issues



Estates can take months and even years to settle. An executor needs to have the endurance to see the process through to the end. (Photo: iStock)

3. Expecting the process to be quick

Even small, simple estates can take several months to settle, said Kieffer. The more complicated the estate is in terms of assets and beneficiaries, the longer it is likely to take.

"If you have a small estate where just a house gets transferred, for example, it might take three months," says Kieffer. "But if the estate is complicated, and there are tax issues or beneficiary issues and the estate has to stay open, it can take 2-3 years depending on the complexity."

Other factors can further complicate and lengthen the process, such as when a decedent has assets in two states. Estate laws are state driven. Differing laws in different states can add complexity to the estate administration process, which might be difficult for an executor to handle without legal advice.

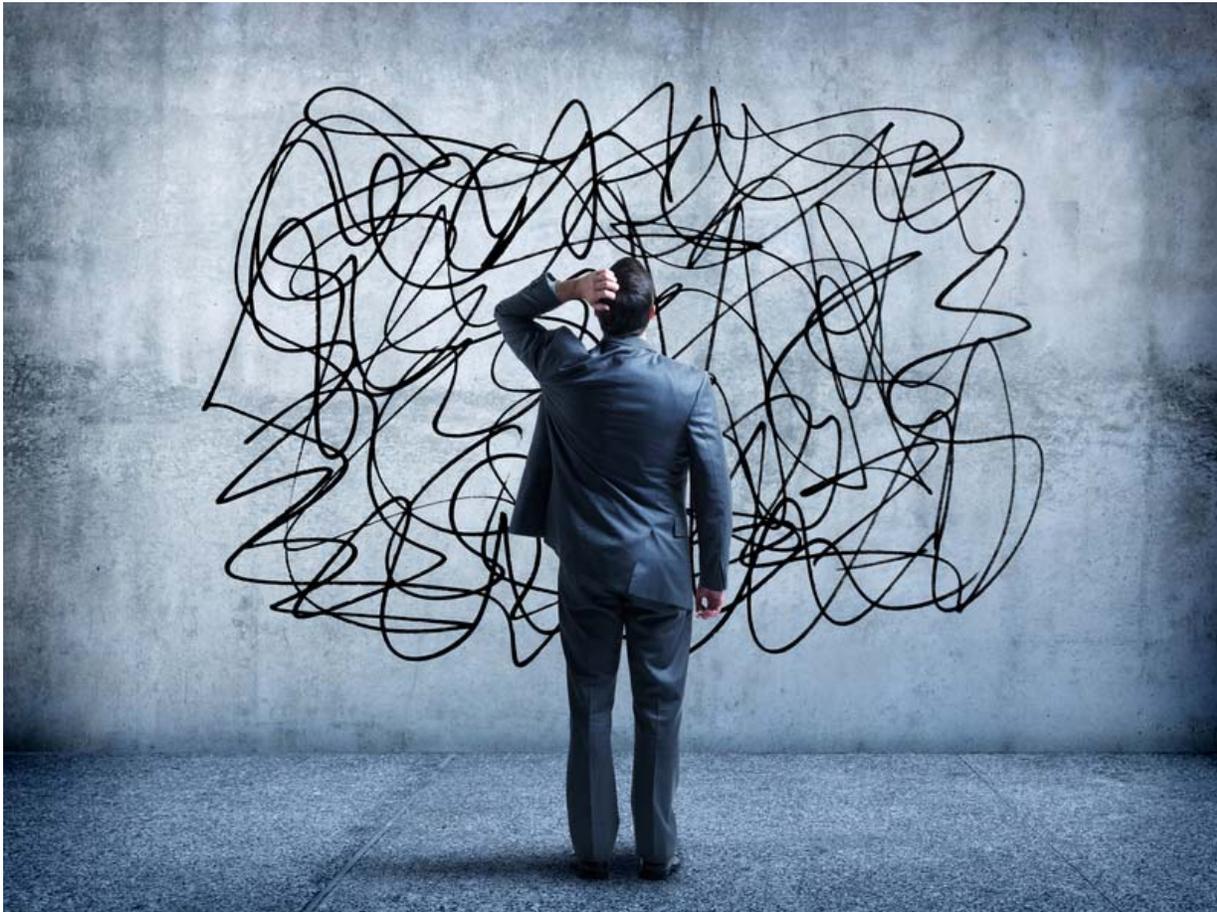
"You have to give notice to beneficiaries, and if you don't have advice, you may not properly notify the right people," said Leila Dal Pos, a partner with Day Pitney who specializes in estates and trusts. "That might slow you down."

She noted that creditors with interest in an estate have up to a year to make a claim on the estate. So even in a non-taxable estate, a creditor might turn up 11 months after the date of death. If the executor has already distributed funds from the estate to beneficiaries and can't pay creditors, the executor could be personally liable, she said.

Still, planning careful, interim distributions to beneficiaries can help them from making waves, says Accettura.

"The longer beneficiaries go without receiving a distribution, the more anxious they become," he says. "Make an early distribution of a small portion of the estate or trust. Interim distributions not only allay anxieties but may also stop beneficiaries who accept the distribution (evidenced by cashing the distribution check) from challenging the administration of the will."

Related: Estate & retirement planning together: constructive or conflictive?



Not having a clear understanding of the will or the executor's responsibilities as a fiduciary can quickly lead to mistakes. (Photo: iStock)

4. Not understanding the will or fiduciary responsibilities

Executors have many legal responsibilities aside from handing out money and assets to beneficiaries. Executors are expected to make an inventory of assets and maintain the value of those assets, account for expenses incurred in the administration of the estate, and do everything in a way that is impartial and avoids self-dealing.

Acceturra recommends staging an old-fashioned reading of the will as often depicted in movies but perhaps not commonly carried out in real life.

"A formal reading may quell anxieties, give credibility to the process and set the tone for a smooth administration," he says.

The estate executor then should determine what needs to take place to maintain the estate during the settlement process. This can include things like making sure homeowners and car

they must understand, that does not absolve them of responsibility for the estate.

"If you seek advice from an attorney that doesn't mean your job is done," says Kieffer. "You're hiring them to give advice, but at the end of the day, as a fiduciary, you are responsible for that estate. They can give counsel and fill out paperwork, but decisions are the executor's."

Throughout the process, executors must be careful to keep careful documentation of any action they take with regard to the estate, as well as keeping records of their own expenses and time spent, which can be recovered as a fee for their services from the estate, says Dal Pos.

Related: Changes to estate planning laws in 2016: what to expect



The quickest way to derail an estate settlement process is to have poor communication with beneficiaries. (Photo: iStock)

5. Failing to be transparent

"Nothing fuels anxieties like the unknown," says Acceturra. "Trust and estate administration can take months or even years. The length and formality of the process sometimes makes

Accettura says executors should reach out to beneficiaries as soon as possible after appointment and regularly communicate thereafter. Initial communication should contain a copy of all relevant estate planning documents and an explanation of the administration process. That meeting should be followed as soon as possible by an initial inventory of assets.

Executors sometimes overpromise things to beneficiaries, which can be understandable in a time of grief and shock often accompanied by worries about money. But that can lead to big problems down the road. Sometimes beneficiaries want a quick distribution of assets, but settlement of taxes can take years, said Dal Pos.

Beneficiaries also might raise questions about why investments associated with an estate aren't doing well.

"Make sure to document everything so you have a paper trail," says Dal Pos. "If it's a complicated estate with a lot of business or real estate assets, keeping good records is important. If the beneficiary questions something, the executor can prove that they made calls or did what they were supposed to do."

See also:

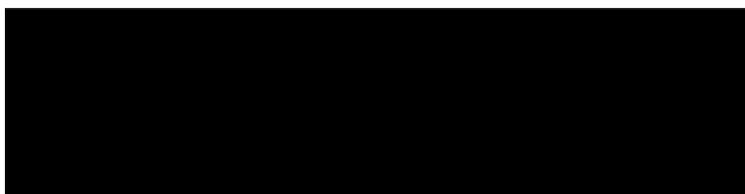
13 ways an annuity can benefit an estate plan

Questions persist around settling Prince's estate

Here are 9 ways to preempt a will contest

We're on Facebook, are you?

Featured Video



**The
AppAssist
tele app**