

Wills, Trusts & Estates

Should I stay or should I go: When to decline acting as executor

By **Stephanie Battista**

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(September 27, 2021, 8:42 AM EDT) -- In previous articles — *The benefits of choosing an executor who's a team player* and *Choosing an executor: Who's in charge?* — we have stressed the importance of choosing the right executor and provided some considerations for appointing executors. Being an executor is not easy. Time and time again, we see executors who are not only surprised by their appointment but who are also overwhelmed and are not sure whether they should act.

So, what if you have reservations about being an executor? Should you take on the responsibility?

The first thing a person appointed as executor should know is that they have a choice in whether or not to act. Although your loved one may have thought you were the best person for the job, you are not bound by any legal obligation to accept your appointment as executor. In some cases, it may even be better if you don't act.

In deciding whether or not you want to act as an executor, first and foremost you should be honest with yourself about whether you have the time, energy and ability that will be needed to properly fulfil your role as an executor. Administering an estate is often a lengthy process, which sometimes can take several years, and involves collecting the assets of the estate, paying the debts, filing income tax returns, carrying out bequests and accounting to beneficiaries, just to name a few of the tasks. If you already have a demanding full-time job, you may not have enough time in the day to fulfil your duties as an executor.

Another important factor to consider is the complexity of the estate assets. An estate consisting of one or two bank accounts will require less time and expertise than an estate that may have complex corporate holdings or assets in multiple jurisdictions.

A small estate can also have its own issues. What if the estate is bankrupt or what if the deceased had numerous creditors at the time of their death? If the estate is insolvent, the added burden of having to deal with various creditors and disappointed beneficiaries may be too much to bear.

You may also want to consider whether there is tension among the beneficiaries or other family members. Sometimes, it can be obvious from the outset that a loved one's death has caused or stirred up family conflict that will prolong the settling of the deceased's estate. Perhaps there is a concern that the will could be challenged by a disgruntled family member, or there is a lot of infighting among the beneficiaries, or maybe you simply don't get along with the beneficiaries and there is a lack of trust.

These potential issues could lead to serious headaches for you and should be a factor in determining whether you want to be the executor and thus answerable to these fighting parties.

The presence of any one or more of these "complexities" does not necessarily mean the estate will be difficult to administer or that you should be renouncing your appointment. Rather, these are just some of the considerations you may want to take into account when faced with the decision of whether you should act.

Whatever you decide, it is important that you make this decision as early as possible. If you know that being an executor is not the right fit for you and it is your intention to renounce, you should not act in the administration or otherwise, once you start to act, a court order might be required if you do not wish to continue.

Sometimes, the difficulties of an estate aren't quite as apparent at the outset of the administration, or personal complications can arise in the middle of an administration — an executor is still able to be removed in these cases, but the path is more complicated. They will need court approval to formally resign and best practice would be to have the beneficiaries release the executor from liability for the time they were acting. In some cases, a formal court passing of accounts may be needed.

Being an executor can be time consuming and challenging, and not everyone might be up for the task at hand. As important as it is for a client to name the right executor in their will, when called upon the act, the executor needs to also carefully consider whether they can, and should, accept the job.

To end with a musical interlude, here is British punk rock band The Clash and their 1981 version of "Should I Stay or Should I Go" that has almost 97 million views on YouTube. Enjoy!

Stephanie Battista is an associate at O'Sullivan Estate Lawyers LLP. She practises exclusively in estate and trust law, focusing on all aspects of estate planning, including cross-border planning and estate administration in order to provide clients with sound and helpful legal advice.

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