Being a Personal Representative
Questions

- What is an executor or personal representative?
- What are the biggest rewards and pitfalls of being an executor?
- What are the executor’s duties?
- How much time will it take?
- Can I get help?
- My loved one just died. What should I do right now?
- After the funeral, what should I do?
- What’s the biggest mistake executors make?
- How can I avoid family quarrels?
- How do I figure out what taxes are owed?
- My loved one died broke. What should I do?
- What happens if I make a legal mistake?
- When is an estate settled?
- My life has changed and I can’t handle an executor’s responsibilities. What are my options?
- I don’t own much. Do I need to appoint an executor?
- Who makes a good executor?

What is an executor or “personal representative”?

When you die, you leave behind loose ends: personal belongings, utility connections, medical bills, perhaps a mortgage and other debts, and more.

The executor is the person named in your will or the person a probate court appoints to tie up those loose ends. Some states prefer the term “personal representative,” while other states appoint an “administrator” when there is no will. The responsibilities are similar, although state laws vary on some details.

What are the biggest rewards and pitfalls of being an executor?

Serving as executor for a loved one is a way to make sure that his or her wishes are followed after death.

But before you agree to serve as an executor—or ask someone else to serve as executor on your behalf—it’s essential to understand the executor’s responsibilities and the potential impact on family members and friends.

Patricia Swanson, Extension to Families program specialist at Iowa State University, Ames, and attorney Michael W. Vogel, principal and sole owner of Vogel Law Firm Ltd., Janesville, Wis., have extensive experience with these issues. “The position of executor needs to be taken very seriously,” says Vogel, who concentrates his legal practice in the areas of estate planning, probate, and trust administration. “This is not a game. This is real life and there are real relationships that can be destroyed.”
of the executor’s actions. There also is the potential for the executor to resent all of the time spent carrying out executor’s duties. Other family members often don’t realize or appreciate how much time and effort it takes to carry out this responsibility.

“Trying to keep peace among all the family members is often the pitfall of serving as an executor,” Swanson says.

What are the executor’s duties?

The executor is charged with “settling” the estate, which includes:

- **Providing an inventory of assets**, including real estate, bank accounts, stocks, and personal property.
- **Determining the value of significant assets.** The executor should ask an expert to appraise any item with a value close to or more than $3,000. Low-value items, such as household goods, may be grouped in categories such as “hand tools” or “kitchen supplies” and assigned a lump-sum value.
- **Locating and paying all creditors and debts.** The executor must arrange for a newspaper advertisement alerting creditors to submit claims within a specified time, usually four months.
- **Caring for property until the estate is settled.** The executor must change legal ownership of many items from the deceased’s name to the estate’s name and then continue to pay mortgages, loans, utilities, and other obligations until assets can be sold or handed off to heirs.
- **Disposing of property.** This may require working with real estate agents, contacting potential buyers, running “for sale” ads, donating low-value items, or holding an auction or garage sale, depending on the nature and value of the property. When deciding how to sell things, keep in mind that different emotions will come into play with each avenue you take.
- **Filing individual and estate tax returns.** See “How do I figure out what taxes are due?” for details.
- **Distributing proceeds to heirs.** Vogel says a typical will lists three to six heirs. Some wills are considerably more complicated, such as that of a Florida woman who left her estate to her 23 nieces and nephews.

How much time will it take?

The number of hours involved can vary depending on the size of the estate, the number of heirs, whether assets are concentrated in a small number of financial firms or scattered among many firms, family relationships, and whether you retain an attorney or trust firm to manage the estate.

The task usually takes more hours right after the death of the loved one and then requires attention in spurts for roughly six months to a year or longer until the estate is settled. Regardless of the size of the estate, expect the time commitment to be significant. It will take longer if the deceased was not organized, or if you are not organized.

Can I get help?

Yes. The executor can hire an attorney or a firm that specializes in administering estates or trusts—typically called a trust firm—to manage administration of the estate. The executor can hire this firm either to provide advice or to take over management of the estate.

Executors sometimes can handle small estates by themselves, but most executors benefit from working with an attorney. Large estates also may require the services of an accountant. You draw payments for these professional services directly from the estate.
My loved one just died. What should I do right now?

Some items can wait for a few days or even a few weeks, but you, along with other family members, perhaps, must take care of some tasks as soon as possible, including:

- **Make arrangements for the memorial service or funeral and the burial or cremation.** These tasks are much simpler if the deceased has told you what he or she wants or left a file of information that indicates his or her wishes. When information is lacking, consult family or friends and aim for simplicity to minimize opportunities to offend. Verify that funds are available to pay for these expenses, because you’ll be held personally responsible if you make arrangements and the estate cannot pay.

- **Contact family and close friends.** Family members can help you identify friends to notify. You also should check the deceased’s address book or computer e-mail list.

- **Prepare an obituary.** The funeral home often helps with this task.

- **Notify sources of income of the death.** This list includes the Social Security Administration, which must be informed within a month of the date of death, as well as pension and annuity administrators.

- **Get a notarized letter from the court or an attorney stating that you have the authority to write checks** and perform other financial duties on your loved one’s behalf. You often will need this to conduct financial transactions.

- **Inform agencies or employees** involved in medical payments or daily care, such as a hospice agency or Medicare.

- **Arrange for the care of others or pets who relied on the deceased to meet their daily needs.** A court typically will handle the care of dependents and will appoint a guardian if one is not named in the will. The executor is not required to become the dependents’ guardian. You may, however, have to deal with pets who will need daily care and eventually new owners.

- **Find or obtain documents related to the estate.** These documents include:
  - Checkbooks
  - Credit card statements
  - Financial statements for investments
  - Safety deposit box information and its contents
  - Birth certificate
  - Insurance policies
  - Stock certificates
  - Tax returns

- **Protect the deceased’s identity and property.** It’s important to find the wallet, for example, to prevent anyone from taking advantage of the deceased’s credit cards or driver’s license. Shred unnecessary papers. If you need information that’s on the deceased’s computer, change the passwords so important information is still there, but protected from others. Later, properly dispose of the hard drive. Consider changing the locks if you’re unsure who has a key, since friends and family may otherwise remove items from the house without waiting for the estate to be settled. You also may want to recruit someone to stay in the house during the funeral to deter burglars.

- **Get copies of the death certificate.** Anyone with a financial relationship with the deceased will require a certified copy of the death certificate, so obtain 20 to 30 copies. In most instances, financial institutions and other companies will not help you proceed with business transactions unless you have a death certificate. It’s also important to have the decedent’s Social Security number on hand; this is the way your loved one will be identified in many cases. The Social Security number is on the death certificate.

**“Trying to keep peace among family members is often the pitfall of serving as executor.”**
**After the funeral, what should I do?**

It’s time to figure out what the estate owns and what it owes. Your next steps should include:

- **Obtain an employer identification number (EIN)** from the IRS (Internal Revenue Service) for the estate, which is required for the estate’s income taxes.

- **Open a checking account for the estate.** Get carbon checks so you will have a record of every check you write. Make all purchases using these checks.

- **Start a paper trail.** Every expense or interaction made on behalf of the estate should have a paper record such as receipts or invoices. Use a file folder to store receipts and invoices as well as other correspondence you have about the decedent to keep documents organized.

- **Create a list of debts.** Locate all creditors who are owed money by the estate. Start by searching personal records. In addition, state laws typically require that you run an advertisement in a local newspaper to notify creditors that they have a limited amount of time—usually four months—to submit claims to the estate. [Getting a credit report in the deceased’s name also can identify creditors.](#)

- **Manage assets to maintain their value.** Transfer ownership to the estate’s name so you can make mortgage and property tax payments, for example.

**What is the biggest mistake executors make?**

Vogel says it’s essential to ensure that all creditors and taxes are paid before distributing property. If assets are transferred to heirs before creditors are paid, the creditors often can force the executor to pay the estate’s debts, although payments must be limited to the total assets that were part of the original estate.

“Don’t distribute assets until everything is settled,” Vogel advises. “That’s critical.”

**How can I avoid family quarrels?**

Communication is essential. Swanson says this communication should start when the will is made. At that time, the individual should explain the rationale for his or her decisions to the family, including the reason for any differences in the amount left to different children. The individual making the will also should tell the executor where final instructions and vital documents are kept.

If the decedent failed to share information...
with the family, Swanson says the executor can reduce dissension by continually emphasizing that it is his or her duty by law to make sure the loved one’s wishes are carried out. Keeping family members informed as the estate goes through the settlement process also can be helpful.

Families often quarrel about issues of what is “fair,” particularly when it comes to personal property with sentimental value. Swanson says parents can use several strategies to avoid this scenario, including:

- Asking each child what item is most important to them and leaving it to them in the will.
- Providing a letter of last instructions to guide the executor. Vogel says this letter or other informal methods—such as placing pieces of tape on the bottom of treasured assets to indicate who should get them—is not binding on the executor unless it is expressly written into or referenced in the will.

If the decedent failed to give instructions, the executor can reduce friction by creating a “fair” system to distribute property. Swanson offers the example of having each family member draw a number from a hat. Family members then choose personal items in order of the number drawn. The value of the items is then deducted from or their share of the estate.

Vogel notes that, in his practice, roughly 80% of executors are family members. But when family members already have difficulty getting along, it may be better to nominate an attorney or a professional executor. The estate is likely to pay more in fees, but you’ll save on misery.

Similarly, setting up a trust can be an invaluable gift to heirs. Having a trust prevents inheritances from having to go through probate, which can be a drawn out process. A trust can help reduce stress for the executor and other family members as well.

How do I figure out what taxes are owed?

The executor must handle several tax obligations:

- **Income taxes.** You must file an individual tax return for the decedent to cover the period from Jan. 1 through the date of death. Any earlier tax returns that were not filed must be completed and any taxes due must be paid. In addition, the estate must file IRS Form 1041 for income received by the estate from the date of death until the estate is settled. The IRS offers more information in **IRS Publication 559: Survivors, Executors, and Administrators**.

- **Additional IRS taxes owed by the heirs.** Inheritances are subject to special taxes and credits under the federal tax code. IRS Publication 559 also provides information about these taxes, which are paid by the estate before an inheritance is distributed to the heir.

- **Federal estate taxes.** The estate tax is imposed on the property the decedent holds at death and is paid by the estate. Congress allowed the estate tax to expire in 2010 but

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**IS THE EXECUTOR ALWAYS RESPONSIBLE FOR ALL PROPERTY OF THE DECEASED?**

No. Property held in “joint tenancy” or assets that have a “pay on death” or “right of survivorship,” such as IRAs (individual retirement accounts) or share certificates/certificates of deposit, can pass directly to the surviving owner without waiting for an estate to be settled. Insurance benefits also pass directly to beneficiaries without becoming part of the estate.
it is scheduled to return in 2011. If Congress takes no action, a tax of 55% of the estate will be imposed on all estates valued at more than $1 million in 2011 and beyond; however, many experts say Congress is likely to act to lessen the tax burden.

■ State inheritance taxes. Many states charge inheritance taxes, which are paid by each individual who inherits from the estate; they may be dependent upon the heir’s personal situation and relationship to the estate. Some states do not charge this tax.

Advance planning can help minimize the taxes that an estate owes; however, once the individual dies, options may be limited.

My loved one died broke. What should I do?

First, be careful when making funeral or burial arrangements. Unless your loved one prepaid these expenses, you will be held personally responsible for the cost. Explore your options for reducing costs with cremation or at-home services.

Be aware that creditors legally can take any assets used to secure a loan, such as a house or a car. Some states make exceptions for surviving spouses who wish to continue to live in a home.

The executor is not personally responsible for debts unless he or she co-signed a loan with the deceased, held joint accounts with the deceased, or acted illegally to remove money from the estate to protect it from creditors.

When some funds are available but not enough to cover all debts, consult state probate laws for a priority list of creditors. Any assets remaining in the estate should be allocated to creditors in order of the list.

Once the money is gone you should contact any remaining creditors with a letter stating that the estate has no assets, as well as with a copy of the death certificate. Some creditors may try to collect from you personally; be prepared to fend them off but never pay them. Your legal responsibility to pay ends when the assets run out.

What happens if I make a legal mistake?

You can be sued for unpaid debts or improper distribution of assets for up to five years after the estate is closed. If you settle the estate and later discover that the deceased had unpaid taxes, the IRS can force you to personally pay the taxes up to the limit of the assets in the estate. Family relationships could be affected as well. The possible repercussions are one reason that expert help can be invaluable.

When is an estate settled?

An estate is considered “settled” when all the estate accounting has been completed, including the payment of taxes and debts, and all property has been transferred to its new owners. You must present proof of these actions to the probate court, which then declares the estate “closed.”

My life has changed and I cannot handle an executor’s responsibilities. What are my options?

If the person who asked you to be his or her executor is still alive, notify that person as soon as possible so he or she can change the will. If the individual is already dead, you can decline and the duty will pass to the deceased’s second choice of executor. If there is none, the probate court will appoint another executor.

I don’t own much. Do I need to appoint an executor?

You need an executor whenever an estate is large enough to go to probate court for settlement, which depends on state limits. In Illinois, for example, estates with a value of more than $100,000 must go to probate. Other states set the limit as low as $50,000.

Who makes a good executor?

Vogel says most of his clients name a family member—usually the eldest child—to serve as executor. But many states require a probate bond when an executor resides out of state, so it can be worthwhile to name an executor who lives nearby. A probate bond is a financial instrument, similar to collateral, which acts as a safeguard that the executor will handle assets appropriately.

An executor also must be a legal adult and a legal resident of the U.S. Finally, in some states the executor cannot be a convicted felon.

Other factors to consider include:

■ Is the person good at managing money?
■ Does the person keep good records?
■ Will he or she communicate well with other family members?
■ Is the person trustworthy?
■ Is he or she willing to take on this responsibility?
Useful resources

Choose the Right Executor, Forbes.com
Clearing Out Dad’s house, MSN Money
Estate Planning, a publication of Iowa State University Extension
FAQs on Being the Executor of a Will, findlaw.com
IRS Publication 559: Survivors, Executors and Administrators
Nolo.com, a Web site offering free legal information
7 Ways to Protect Your Parent’s Good Name, Kiplinger.com
Should You Be the Executor? Kiplinger.com
Steps you must take when someone dies, MSN Money
What can you get for Mom’s stuff, MSN Money
When your parents die broke, MSN Money
Who Gets Grandma’s Yellow Pie Plate