



OSBORNE PARTNERS
Capital Management, LLC

The Role of an Executor

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"In this world nothing can be said to be certain, except death and taxes" - Benjamin Franklin.

As we are currently engaged in gathering forms and data for taxes, I thought that now could also be a good time to review what exactly is involved in the role of estate executor and/or trustee. **An executor**, sometimes referred to as a personal representative, is an individual appointed in a will to carry out specific duties relating to the settlement of an estate. If a person has a trust, the executor is referred to as the **successor trustee**. The primary role of an executor/trustee is to ensure that the deceased's wishes, as outlined in their will or trust, are carried out faithfully and efficiently. Toward that end, the executor needs to inventory estate assets, communicate with creditors and taxing authorities, file and pay taxes, and pay debts of the decedent, make payments for various services (professional appraisals, tax preparers, and attorneys) and, eventually, distribute the estate assets to the rightful beneficiaries.

As you can imagine, or may have experienced, the job of an executor can be a daunting task. Fortunately, with some advanced preparation, and open communication, the job can be made slightly less stressful.

It should go without saying, the first responsibility you have to your executor or trustee is to let them know that you intend to name them. Your plans might be thwarted if the surprised person declines the appointment, as is their right. Along with naming someone competent whom you trust, proximity is a great help if you have a choice. **Many of the initial to-do items are done in-person.**

- Arrange for care of dependents and pets
- Obtain the will and the trust (do not keep these inaccessible in a safety deposit box)
- Look for burial instructions or any pre-planned funeral preparations
- Arrange for organ donation, if applicable
- Arrange the funeral and/or celebration of life
- Publish obituary, notify family and friends
- Notify investment advisor, banks, insurance agent, CPA, attorney
- Obtain access to the safety deposit box
- Find all asset related documents: statements, deeds, insurance policies, contracts, mortgages
- Gather information regarding ongoing income, expenses and debts
- Obtain certified copies of the death certificate (generally supplied by the funeral home)
- Send copies of the death certificate to the three major credit reporting agencies:
Equifax, Experian and Transamerica

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- Notify social security and pension administrators (the funeral home can do this)
- Give notice of death to Franchise Tax Board (if the deceased resided in California)
- Notify post office to forward mail to personal representative
- Stop all unnecessary expenses: subscriptions, health care, memberships, entertainment, phones and internet
- Secure all real property: real estate and contents (including the home), vehicles, businesses
- Manage digital assets: social media, email, online accounts, maintain a secure updated password list
- Cancel credit and debit cards

It is readily apparent that these tasks are significantly easier to complete with an up-to-date descriptive list of assets and liabilities, and contact information for friends, lawyers, advisors, accountants, and other associated people.

The next step is to determine whether probate is required. The probate process is the legal procedure by which a deceased person's estate is administered and distributed. If there is a probate estate, the executor needs to initiate probate proceedings by submitting to the courts the deceased's will along with a petition for probate. Once probate is granted, the executor receives legal authority to act on behalf of the estate.

Many property interests can be transferred outside of probate, and it is generally preferable to avoid the expense (example: \$63,000 on a \$5 million gross estate) and time (up to 18 months) of probate.

Assets titled in the following ways will avoid probate:

- Assets held in a trust with named beneficiaries
- Assets held Payable on Death (POD) (typically bank accounts)
- Assets held Transfer on Death (TOD) (typically brokerage accounts)
- Joint tenancy with right of survivorship
- Revocable transfer of death deed for real property
- Community property and separate property assets passing free of trust to surviving spouse or domestic partner
- Retirement plans (IRA, 401(k), Roth, SEP, pensions, etc.) with designated beneficiaries
- Life insurance with designated beneficiaries
- Social Security death and survivor benefits

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If there are assets that are held outside of the above list, it is still possible to avoid probate in California by using a Small Estate Affidavit if the amount is “small”, currently valued at \$184,500 or less.

If the estate needs to be probated, it is advisable to work with an estate attorney or other professional. Indeed, it is very helpful to work with an estate attorney (preferably the attorney who wrote the trust or the will) even if the estate can be settled outside of probate.

A crucial aspect of the executor/trustee role is to **identify, inventory, and manage the estate assets**. This includes everything from real estate and financial accounts to personal belongings and investments. The executor/trustee must take inventory of these assets and assess their value. In some cases, assets may need to be appraised by professionals to determine their fair market value accurately.

Obtain an estate Tax Identification Number (TIN). All investment and bank accounts should be moved to estate accounts established with the Estate Tax Identification Number (TIN). This can be applied for through the IRS, or more easily, at Osborne Partners we are able to assist in obtaining a TIN for you. All the financial institutions will need a copy of the death certificate, the trust (or letters probate if applicable) and the TIN number.

Settle Debts and Liabilities before any assets are distributed to beneficiaries. This could involve paying outstanding bills, taxes, and funeral expenses using funds from the estate. Creditors must be notified of the individual's passing, and any valid claims against the estate must be addressed in accordance with applicable laws and regulations.

Once debts and liabilities have been settled, the executor/trustee oversees the distribution of inheritances to the beneficiaries as outlined in the will/trust document. This process must be carried out meticulously, ensuring that assets are distributed in accordance with the deceased's wishes and any legal requirements. Executors/trustees are tasked with handling sensitive matters with tact and discretion, particularly in cases where disputes or conflicts among beneficiaries may arise.

A critical responsibility of the executor/trustee is to file tax returns on behalf of the deceased and the estate. This includes individual income tax returns for the year of death, as well as any estate tax returns. Executors/Trustees must ensure compliance with all tax obligations, including reporting income, claiming deductions, and paying any taxes owed.

Federal and State tax filing for the final year of the decedent's life must be completed by April 15 of the year following the taxpayer's death. Depending on when the taxpayer passed away, more than one tax return can be required. For example, if a taxpayer passed away in February of 2024, a return for the taxpayer would have to be filed by April 15, 2024 for tax year 2023, if it was not yet filed, and by April 15, 2025, for the 2024 tax year (covering January and February of 2024).

The estate federal tax return is due nine months after death, unless an extension is filed, and for every year that the estate retains undistributed assets.



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Thankfully, the executor/trustee does not need to be an expert in tax and legal matters, they are almost always encouraged to seek accounting and legal assistance to navigate these issues to protect the interests of the estate and its beneficiaries.

Effective communication is essential throughout every step of the process, beginning with the naming of the executor/trustee. Transparency and openness help to foster trust and minimize confusion and uncertainty, enabling a smoother and more harmonious settlement of an estate. Your Wealth Counselor at Osborne Partners will be happy to talk through any issues or questions that you may have, and, while we are neither attorneys nor tax accountants, we are available to provide guidance based on decades of experience. ■

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