

Frequently Asked Questions About Independent Executors

I was just named independent executor of someone's will. What do I need to know? You need to understand the importance of your job as independent executor and the duties and powers that you have as independent executor. You should ask an attorney about what is involved before agreeing to serve as independent executor.

I was told that I have "fiduciary duties" to the beneficiaries. What is a fiduciary duty and what does that mean for me? A *fiduciary* is a person having a legal duty to act primarily for the benefit of another. When you are acting as independent executor, you are acting primarily for the beneficiaries of the estate, and you have legal, fiduciary duties to act for their benefit in managing and administering the estate. The law requires a high standard of ethical and moral conduct of fiduciaries. There are many specific duties, some of what are imposed by statute, some by case law and some by the will itself. It is important that you understand these duties. Ask your attorney to explain the duties applicable to you.

Now that I am qualified and have received Letters Testamentary, what do I do with these Letters Testamentary? Letters Testamentary are your proof that you are the person designated and authorized to act on behalf of the estate. You will need to present Letters Testamentary to persons holding the assets of the estate so that they know you are the representative for the estate and that you are entitled to take possession of the estate assets. Banks, brokerage firms, title companies and insurance companies are the types of entities that may request Letters Testamentary.

May I put the estate property in my bank account so that I can avoid opening another account solely for estate property? No. You have a duty to keep estate assets segregated from your personal assets. Therefore, you should never put estate property in your personal bank account and you should never commingle estate assets with you own personal assets. Even though you may be the only beneficiary, you should play it safe and keep estate property separate (**establish a separate bank account under the "Estate of"**). You should seek the assistance of an attorney if you have questions about this.

Can I use estate property to pay the decedent's medical bills and funeral expenses? Typically, an independent executor may use estate funds to pay funeral expenses and expenses of last illness, and may even sell estate property in order to pay funeral costs and expenses of last illness. However, before paying bills, you should discuss this with your attorney.

Can I sell the real property that is in the estate? Generally, an independent executor may sell estate property (real or personal) if funds are needed to pay expenses of administration, funeral expenses, expenses of last illness, and to satisfy claims against the estate. If the real property is not being sold for one of these purposes, the independent executor must have express authority in

the will (in other words, the will must specifically state that the independent executor has the power to sell estate property) in order for the independent to have authority to sell the property.

I was told I am required to file an Inventory, Appraisal and List of Claims. What is this and when do I need to file it? An Inventory, Appraisal and List of Claims is a document which lists the assets in the estate, the value of each asset as of the decedent's date of death, and a list of all claims due and owing to the estate. The Inventory, Appraisal and List of Claims is often referred to simply as "the inventory." The inventory must be filed within ninety days of your appointment as independent executor, unless the court grants an extension of time in which to file the inventory. If you need an extension of time to file the inventory, you must file a request with the court. The inventory has specific statutory requirements. **Do not file this with the Court yourself, it must be filed through the attorney.**

Am I required to publish or send notice of any kind to creditors of the estate? You are required to publish a notice to creditors in a newspaper printed in the county where the Letters Testamentary were issued. The notice must state that all persons having a claim against the estate being administered must present such claim or claims within a particular amount of time prescribed by law. This notice must be published one time and proof of the notice must be provided through an affidavit of the publisher. This notice to creditors must be filed with the court within one month after receiving Letters Testamentary. **You also must give notice to all known secured creditors. This notice must be given within two months after receiving Letters Testamentary.** You may, but are not required to give notice to unsecured creditors; even though this notice is not required, it is sometimes a good idea. Because these notices to creditors have very specific requirements, you should seek the assistance of an attorney in preparing and sending these notices. **Your attorney will prepare the Notice to Creditors and will then post with the appropriate agency. Your attorney will provide you with the Notice to Beneficiaries required.**

This estate exceeds the amount a person may transfer tax-free at death. Do I need to file a return with the IRS and/or with the state in this regard? What do I do if taxes are due and how will I know if taxes are due? If you believe that the estate exceeds the amount a person can pass tax-free at death (that amount depends on the year in which the decedent died), you should seek the assistance of a tax professional to advise you. Your attorney can help you with this. Generally, if the value of the assets in the estate exceed the amount a person can pass tax-free at death, the independent executor must prepare and file a federal estate tax return and a state inheritance tax return and, if taxes are due, pay the tax. This is a complicated process and you should seek the help of a tax professional to assist you with this.

What do I do when I am ready to distribute the estate property? When you are ready to distribute the estate assets, you should review the will again carefully and distribute the assets as directed in the Will. Again, your attorney can assist you with this process.

Being an independent executor is a necessary but largely thankless job. You should go into it with your eyes open.

