

First-Time Executors

Where There's
A Will ...

By Patricia Kutza

Whether they accept the role out of love for the deceased or simply out of a sense of duty, newly minted executors can find their work cut out for them. On paper, processing the instructions of the departed may look like a straightforward effort. But first-time executors often discover their daily work stress pales in comparison with the tedious and often protracted responsibilities of settling a departed's estate or trust.

An executor is the person named in a will who is entrusted with collecting and distributing the departed's assets and possessions by following the instructions outlined in the will and directed by state law. Living trusts, as a substitute for wills, are becoming more commonplace as people look for strategies to avoid probate and reduce or eliminate estate taxes.

Executors and trustees have similar duties: administering the estate and distributing bequests to beneficiaries.

Unlike some executors who must spring into action after the sudden death of their loved ones, Elk Grove resident Leticia Page had plenty of time to prepare for her role. Her then-husband, Doug Obal, contracted cancer, so they took a will-writing course through the Learning Exchange. They


later purchased a will-making template, making Page the executor. Doug's illness was protracted and they were already divorced when he died in May 2005.

After his death, Page found herself dealing with circumstances she couldn't have fully foreseen. Remarried and working full-time as a Sacramento county civil engineer, she got pregnant one month after her former husband's death.

Hoops and Hurdles

"I didn't anticipate how much administrative work being an executor would entail," she says. Plus, she didn't have the luxury of timing all her executor responsibilities to dovetail with her already-busy work schedule. "Doug died in May, but it took until July to get a court hearing where I was officially named the executor. Until that hearing, there were tasks I couldn't do, such as clean out the house for its eventual sale. I also couldn't distribute assets bequeathed to his beneficiaries," Page recalls.

What she did do fairly soon after her former husband's death was hire Sacramento-based probate attorney John Palley of the law firm Johnson, Fort, Meissner, Joseph & Palley. "Hiring

 jfmjlaw.com John was by far the best decision I made" Page says. "In retrospect, I can't imagine going through this process without an attorney."


"During probate, timing is everything. There are many hoops or hurdles that need to be negotiated at the exact time," explains Palley. "If the paperwork isn't perfect at a probate-court hearing, the judge will order a continuance. I have seen cases continued four or five

times because the executor, working alone, couldn't solve the problem."

Palley says that probate attorneys also help the estate save money by ensuring that executors comply with state laws. "A frequent scenario I see is executors rushing to pay the deceased's creditors. In one case, the executor had paid off all the deceased's credit cards only to find the estate assets were then completely depleted. There is an order of priority for claims against an estate. If he had followed the law, he could have ensured that all the funeral and estate-management expenses and surviving spouse and children allowances were paid first," he says.

Words for the Living

Researching and documenting the vagaries of all 50 states' rules for settling estates and trusts proved to be a daunting task for Mary Randolph, author of "The Executor's Guide, Settling a Loved One's Estate or Trust." Yet all this exhaustive detail boiled

 nolo.com down to one startling and recurring idea: "I was constantly reminded ... there's a lot that the *living* can do to make their executor's job easier, and virtually nothing that can be done after their demise," she says.

With that thought in mind, Randolph crafted a list of "best practices" or actions the maker of a will or a trust can do to ease the executor's or trustee's job. Organization and communication are keys, she says. Documenting all significant assets

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— John Palley, probate attorney, Johnson, Fort, Meissner, Joseph & Palley

is important, but just as critical is communicating where to find this documentation as well as the will, property deeds and insurance policies. To further assist the transition, one can structure property ownership to avoid probate and make clear succession

plans for complex investments such as a family business.

"Handling an estate is a very big and intensely emotional job," says Randolph. Executors often unwittingly become the targets for all the unfinished emotional business

among the departed and the family.

"If a will- or trust-maker intends to exclude someone from her estate, she should explain her decision in person," Randolph notes. "Her executor should not have to be in the position to explain it after the fact." 



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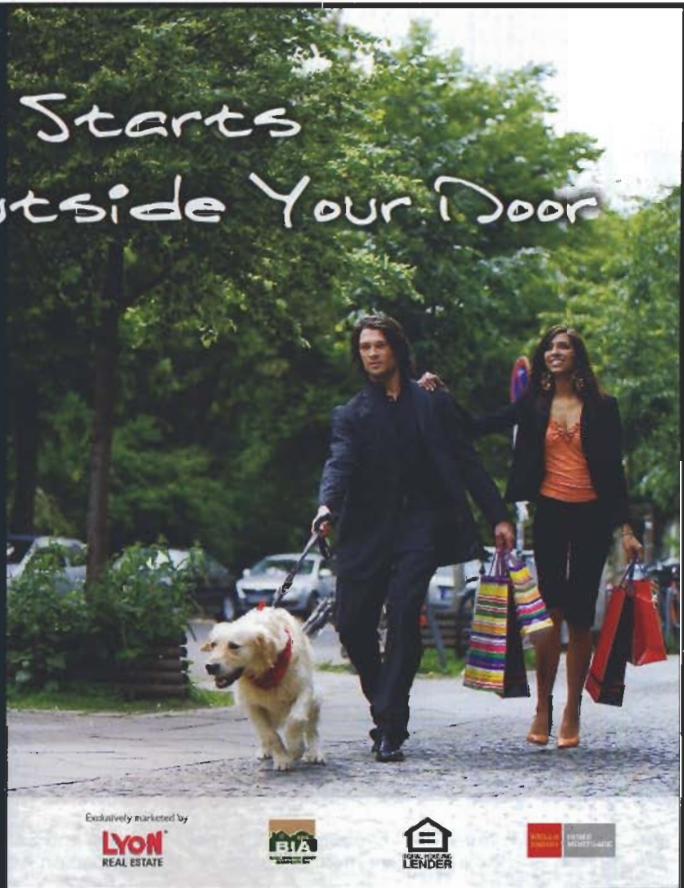
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