

# Price & Farrington's Estate and Tax Planning FastFaxts

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Estate, Tax, Business and Wealth Planning for Advisors and Clients

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## When Duty Calls: What Happens When You Agree to Handle Your Parents' Estate?



HAPPY  
THANKSGIVING!

When Kimberly Rizy's father asked her whether she would be willing to serve as executor and trustee of his estate, she agreed without skipping a beat. After he died in 2003, Ms. Rizy, age 40, wished she hadn't taken the matter so lightly. It turned out to be more than a full-time job for the first seven months after she learned that her father had 32 properties and investments in eight states, as well as two corporations.

**Dizzy Ms. Rizy.** She couldn't locate deeds for most of the properties and faced environmental issues. Her sales and marketing background didn't prepare her for the real estate, investing, accounting and legal issues she had to deal with. Even now, with the estate having paid more than \$100,000 in legal, accounting and appraising fees, Ms. Rizy is still working with 13 lawyers in various states trying to sort out her father's affairs and distribute his assets.

This example might sound more extreme than most, but here's the point: Executors and trustees are often caught off guard by the extent of their responsibilities. People don't necessarily understand the burden they're taking on until it's too late. And by that time, they not only face mountains of work, but also are legally responsible for handling the estate properly and can be personally sued for mistakes.

**The PR.** While an executor and trustee have different responsibilities, one person often serves in both roles. An

executor's role (called a "personal representative" or PR in Washington) begins when the will is filed to begin the probate process and ends after the estate has been distributed or is transferred to a trust. It involves locating all bank and investment accounts, deeds to property and other assets. Then, the PR must retitle or sell assets, appraise property, make sure insurance issues are settled, terminate leases, settle debts and expenses, and file income and estate-tax returns.

**Trust-teeed off!** A trustee's role is to oversee assets in a trust. This typically means investing in beneficiaries' best interests and distributing assets according to the trust's instructions. It can be a temporary or a long-term responsibility. In theory, the job should be straightforward because the grantor's wishes are spelled out in the trust. But it's not always that easy. Trustees can face challenges from contentious beneficiaries or tough investing decisions. As a common example, the surviving spouse might want assets invested to throw off as much income as possible, while secondary beneficiaries usually favor investing for growth so they'll have more to inherit down the road.

What's more, trustees often have the enormous responsibility of deciding when to make payouts to beneficiaries. This authority can get complicated when there are problem beneficiaries, one with a substance-abuse problem, for example.

Before accepting either title, it's important for the designee to be up to the task. It takes an organized



Glenn Price and Chuck Farrington

person to get the job done right, and it's not necessarily just an administrative position. Emotions come up in a huge way in families; beneficiaries can go to court over who is going to get their parents' \$15 etching.

Whether you are appointed executor, trustee or both, there are effective ways to avoid complications, especially if you act before the grantor's death. Here are a half dozen steps to make your (or your client's) fiduciary responsibilities easier:

**Ask for a road map of the estate.** A will identifies who will be inheriting assets, but it doesn't necessarily identify all of the assets or tell you where to find them. This can be an enormous headache for the executor, especially if records are disorganized and there are multiple investment accounts or real estate holdings. To avoid frustration, you should request that a special document be included with the will that catalogs all accounts, debts, assets, benefits and insurance policies. It should list account numbers as well as phone numbers of contacts for each account. And it should explain where documents

Always go to other people's funerals,  
otherwise they won't come to yours.

- Yogi Berra

You haven't lived until you've died in  
California.

- Mort Sahl

Either this man is dead or my watch  
has stopped.

-Groucho Marx

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are located. There's no standard form for this, and it's not a legal document. But it will make your life as personal representative a whole lot easier.

☑ **Outsource what you can't handle.** Don't plan on doing everything yourself. You have a fiduciary responsibility to handle things the best you can, and in many cases this means having a professional take on certain tasks. There are a couple of ways to accomplish this. Either suggest that a co-executor (co-PR) or co-trustee be named who is qualified in trust and estate law, such as an attorney or an accountant. Or plan on hiring help yourself. Discuss with the person appointing you as executor or trustee which professionals he or she currently works with. They are probably the best help to hire after death because they'll be familiar with the circumstances.

☑ **Create a timeline.** There are a number of important deadlines that an executor or trustee must meet. If you know what they are, you can work toward them well in advance. Among the key deadlines for executors: estate taxes must be filed within nine months of the date of death, or 15 months with a

### **Bequests With a Catch**

An Englishman left his widow one farthing, with directions that it be forwarded to her in an unstamped envelope. - 1916

Not to be outdone, a London man bequeathed to his wife "one pair of my trousers, as a symbol of what she wanted to wear in my lifetime, but did not". -1930

A scholar declared in his will: "To my beloved nephew I bequeath ten thousand which he will find in a package in my safe." The nephew found a packet of 10,000 chess problems, with a note promising that they would invaluable improve his mind. - 1909

A childless husband legally adopted his wife as his child to enable her to take the entire remainder interest in a Kentucky trust fund established by his mother and bequeathed "to his heirs at law". - 1957

tax-filing extension. You have to start selling assets early on so you have cash to pay taxes. Trustees and executors must pay attention to state deadlines too, including for making disclaimers or for distributing assets.

☑ **Prevent problems with beneficiaries.** To prevent a court battle between beneficiaries over tangible personal property, ask the person writing the will (the testator) to include a letter to the beneficiaries in his or her handwriting, specifying who gets Grandpa's portrait, Grandma's ruby ring and other prized possessions, including ones with great sentimental (but no real) value. As for everything else, the letter should order that if it isn't divided up within three or four months, the PR should sell it. The personal touch often convinces beneficiaries that this is what their mom or dad truly wanted. If you've been asked to be a trustee with authority to distribute assets as you see fit, get specific guidance. Ask the grantor to write down specific circumstances under which the trust beneficiaries should receive cash, such as for education, a wedding, a down payment on a house, or something else. Also determine whether the grantor has other *incentive-based* distribution considerations in mind (See an upcoming *FastFacts* article on this important topic.)

☑ **Treat your role as a job.** One of the biggest mistakes that people make when they're asked to serve as PR or trustee is to insist that they do it as a favor. The reality is that this is a business matter and should be treated that way. Otherwise, it doesn't become a priority. How much you are paid depends on your state. For executors, it is often calculated as a percentage of assets in the estate. For example, in New York, you get 5% of the first \$100,000, 4% of the next \$200,000, 3% on the next \$700,000, 2.5% on the next \$4 million and 2% on anything more. Washington state has no such statutory fee schedule for personal representatives, although some law firms publish a fee schedule for cases in which the firm (or a



lawyer in the firm) is serving as PR. Trustees are typically paid according to a similar schedule, but they receive an annual fee for their services rather than a one-time payment.

☑ **Maintain detailed files.** Keep notes on all the decisions you make, hours you spend, and expenses paid on behalf of the estate. No matter how many lawyers or accountants or appraisers or other experts you hire, as executor or trustee you're still ultimately responsible for the proper handling of an estate. As long as you can show that you have done your best to maintain the best interests of the beneficiaries, you'll be prepared for the day when a disgruntled beneficiary accuses you of neglecting your responsibilities.

*Proper estate and trust administration are important components of effective estate planning. For best results, the plan should be clear, with realistic expectations and plenty of communication before the fiduciary responsibilities take effect.* ■

