

**Managing Other People's Money:
*I'm Legally Responsible: Now What!***

- Executor -

OSHER Life Long Learning Institute | Connie Bourne, Esq.
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Seminar Goals

This information is for educational purposes only and does not constitute legal or other professional advice, nor does it contain all the duties of an executor. It is recommended that you seek advice and services from legal, financial, tax and other estate planning professionals regarding your personal estate and long-term care planning needs.

**Connie Bourne, Esq.
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Fiduciary

- An individual who holds a legal, ethical, and moral relationship of trust between him or herself and another person or persons
- Involves the prudent care of assets, especially money for another person
- Includes duty of care and duty of loyalty

Last Will & Testament

- **A last will is a written document that allows you to distribute your property to whom you choose after your death. It lists beneficiaries (the individuals or entities who will get your estate), and bequests (the specific items you are giving away).**
- **In Virginia, you must be 18 years of age and of sound mind. Intestate - - if you die without a will the Virginia Code specifies who are your beneficiaries.**
- **The executor is the person designated to carry out the terms of the will and is responsible for making sure that debts and creditors of the deceased are paid in full, and that any remaining money or property is distributed according to his or her wishes.**

Executor

- **Anyone can be executor as long as they are 18 and mentally competent**
- **Can elect to have more than one**
- **Virginia residency is not a requirement, however, an out of state executor cannot waive bond, still need a Virginia resident must be appointed to accept service of process**
- **The law does not require an executor to be a lawyer or other legal or financial expert, however, it does require than every executor fulfill their duties with the utmost honesty and diligence. The word that is most often used to describe this role is a "fiduciary duty," which holds the executor to act in good faith with regards to a person's will.**

Specific Duties of Executor

- **Locating the deceased person's assets.**
- **Deciding if probating the last will and testament in court is necessary**
- **Finding and contacting the people who were named in a will who are beneficiaries**
- **Making sure the will is filed in the appropriate probate court**
- **Settling the deceased's affairs**
- **Establishing a bank account for the estate**
- **Continuing necessary estate payments**
- **Paying off debts and creditors**
- **Paying final income taxes**
- **Ensuring the property distribution of the deceased's property**
- **Settling disputes about asset distribution**

Probate

- **Court supervised process to transfer legal title of property from a decedent to his or her heirs or beneficiaries**
- **Legal procedure in which debts are paid and remaining property is distributed to beneficiaries**
- **Will is submitted to Clerk of Circuit Court who determines validity**
- **Executor appointed in your will is ordered to carry out your wishes**
- **A person named in a will as executor cannot exercise the powers of executor until he qualifies as such by taking an oath and giving bond in the court**
- **An executor may provide for the burial of the testator, pay reasonable funeral expenses, and preserve the estate from waste.**

First Three Actions an Executor Must Take

❖ First Three Important Actions

- Find and attorney, accountant, or financial advisor
- File notice of probate within 30 days
- Collect Assets

❖ Other Important Actions

- Keep All estate assets and money separate
- Do not pay debts until you are certain estate is solvent
- Cancelled checks and receipts are required
- Accurate record keeping

Case Scenario: Fiduciary Duty

For example, let's say our executor has an antique ring listed on the inventory, but she incorrectly listed the value of the ring at \$100. In Virginia, the beneficiary will have an opportunity to challenge the executor's valuation by either protesting to the Commissioner of Accounts or by simply contacting the executor to request that the ring's value be appraised. The executor could be personally liable if he fails to do so — obtaining less than full value for estate assets is not in the estate's best interests and violates her fiduciary duty.

INFORMATION

- <http://www.courts.state.va.us/main.htm>
- <http://www.vsb.org/>

