

# DUTIES OF AN EXECUTOR OR ADMINISTRATOR IN A TEXAS PROBATE

*Understand the Duties And Responsibilities That Come With the Position of Executor So You Will Know Why Considerable Thought Should Go Into Deciding Who to Appoint to the Position*



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Given the importance of your estate plan, care should be taken when making all of the decisions that are required during your plan's creation. People often make the mistake of focusing on decisions relating to the distribution of estate assets but fail to spend much time with decisions relating to the administration and probate of the estate. Appointing an executor, for example, may

be the single most important decision in an estate plan, yet people frequently spend very little time deciding who to appoint to the position.

Once you have a better understanding of the duties and responsibilities

that come with the position of executor you will likely know why considerable thought should go into deciding who to appoint to the position.



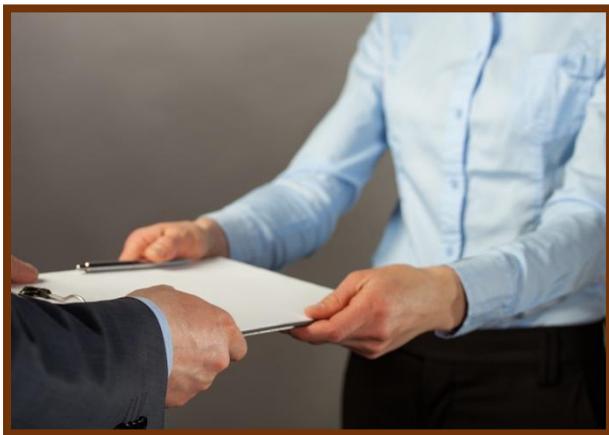
## **EXECUTOR VS. ADMINISTRATOR**

When you create your Last Will and Testament you will appoint someone to oversee the administration of your estate. That person is referred to as the “executor” of your estate. In the event that you die without executing a Will, referred to in legal terms as dying “intestate”, someone will still need to oversee the administration of your estate. That individual is referred to as an administrator in an intestate estate administration. The term used in Texas to refer to either an executor or an administrator is “personal

representative”, or PR. Though there are small differences in the duties and responsibilities of an executor and an administrator, the most significant difference is that an executor is chosen by the decedent whereas an administrator is either a volunteer or a court appointee.

## **BEGINNING THE PROBATE PROCESS**

When you die, locating your Last Will and Testament should be one of the first practical tasks undertaken by your loved ones. Once located, the person named as executor in the Will must prepare to open the probate of your estate. When a Will is not located, a family member or loved one may



volunteer to be the administrator. He or she will also need to prepare for probate. The first decision to be made is whether the estate requires formal probate. Estates where the only issue is clearing title to real property may qualify for an alternative to formal probate known

as “muniment of title”. Another possibility if the estate assets are minimal and the decedent died intestate is a small estate affidavit. All other estates, however, must go through formal probate.

The formal probate process begins by filing a petition to probate in the appropriate court. The original Will must be submitted to the court at this time. One purpose of probate is to “prove” the Will. The court must determine that all the formalities of execution were met and the Will was not cancelled out or revoked prior to death. The court must also approve

the appointment of the executor or administrator as well as determine if the estate qualifies for independent administration before probate may proceed.

## **LOCATING, VALUING, AND MANAGING ESTATE ASSETS**

Once officially appointed by the court, the PR's job begins with the task of locating all of the estate assets. All assets owned by you at the time of death,



or in which you had an ownership interest, must be located by your PR and a date of death value ascertained. Obtaining the required values often entails hiring estate appraisers, real estate appraisers, and financial consultants if the estate assets are valuable and/or complex.

Your PR must manage all of your estate assets during the pendency of the probate of your estate. In some cases this means nothing more than closing a financial account and keeping track of the amount on deposit. For other assets, however, daily management can be time consuming and cumbersome. Real property, for example, may require maintenance and upkeep until it is transferred to a beneficiary. Furthermore, a PR is often required to make the difficult decision as to what assets to sell if the estate lacks liquidity and creditors or taxes need to be paid.

## **CREDITORS OF THE ESTATE**

Your PR is also required to provide notice to all potential creditors of the estate. To ensure that unknown creditors have notice of the process your PR must publish notice of the probate in a local newspaper. Creditors must then file a claim with the court which is then reviewed by the PR. The PR may approve the claim or deny the claim. If approved the PR must pay the claim out of estate assets. If the claim is denied by the PR the creditor may pursue the claim in court.

## **PROBATE LITIGATION**

The PR represents you and your estate throughout the probate process; therefore, if any litigation comes up during probate your PR must defend the estate and/or defend the Will you created and executed. For example, if a Will contest is filed your PR must defend the Will submitted to probate. Likewise, if your PR denies a creditor claim and the creditor is not happy with that decision your PR must defend the decision to deny the claim throughout any litigation related to the claim.

## **TAXES**

If you had income in the year of your death, a personal tax return must be filed for you. In addition, and depending on the size of your estate, an estate tax return must be prepared and filed before any assets can be distributed to the intended beneficiaries. If you, or your estate, owe taxes, the tax obligation must be paid from the estate assets by your PR.

## **THE ROLE OF ESTATE PLANNING ATTORNEY**

Because the duties and responsibilities are often complex, time consuming, and require a degree of legal knowledge the average individual does not have, most executors and administrators retain the services of an experienced estate planning attorney to help throughout the probate process.

## **TRANSFERRING ASSETS TO BENEFICIARIES**

Only after all assets have been accounted for and valued, creditor claims paid, litigation resolved, and taxes prepared and paid can the PR begin to transfer estate assets to the intended beneficiaries or heirs of the estate.

It should be clear at this point that the position of executor or administrator of an estate is a time-consuming position that requires a considerable amount of skill and knowledge in various areas. A small mistake in the probate process can cost your estate --and ultimately your beneficiaries-- both time and money. Knowing all of this should prompt you to take the time necessary to pick the right person for the job when you create your estate plan.

Texas Legislature, [Powers and Duties of Personal Representative](#)

Texas Young Lawyer Association, [Texas Probate Passport](#)

Texas Legislature, [Probate Code](#)

Travis County Probate Court, [A Guide for the Texas Independent Executor](#)

## About the Author



Stephen A Mendel

Stephen A. Mendel is a member of the American Academy of Estate Planning Attorneys, a national organization that serves the needs of legal professionals whose practices focus on estate planning and asset protection. The Academy fosters excellence among its members and helps them deliver the highest possible service to their clients. Stephen A. Mendel provides a broad spectrum of strategies and planning tools that can accomplish very diverse goals.

Mr. Mendel is an attorney who focuses a substantial part of his practice on estate planning. Mr. Mendel's guiding principle is to provide his clients with quality legal services tailored to each client's specific needs and goals.

Mr. Mendel has been providing quality estate planning for Houston and surrounding area clients for many years. His firm helps numerous people who are concerned about protecting their families from the devastating legal effects of disability and death. The aim of the firm is to help you accomplish your estate planning goals and to take the mystery out of the planning process.

Specific services include, but are not necessarily limited to, design and preparation of wills & trusts, asset protection, use of family limited partnerships as part of the planning process, buy-sell agreements, business counseling, and succession of closely held, family owned businesses.

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