



CHARTER OAK  
CAPITAL MANAGEMENT

*Registered Investment Advisors*

## The Acorn

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### What Happens if You Die Without a Will?



If you die without a will, fail to name an executor in your will or if your executor refuses or fails to serve, the probate court appoints an administrator. If you leave no will, your assets will go to your closest relatives under the laws of "intestate succession." (Intestate" is a fancy way of saying you died without a will). With no will or no named executor, you could have no say in who will manage your final affairs and/or who will receive your assets.

Thus, it is important to have a will and to assign an executor or personal representative to carry out your estate. The below are important considerations if you are having a will prepared or revisiting assignment of these roles.

Charter Oak advises its clients to have a will, a trust where appropriate, and corresponding powers of attorney for health care and financial decisions. We will cover more on the roles powers of attorney play in future articles. For now, let's begin with some basics.

#### **What is an executor?**

An executor or personal representative is a person or entity who acts for you after your death. You nominate or designate an executor in your will to settle your estate. Your executor acts in your place to make decisions you would have made if

you were still alive. An executor's responsibilities typically last from 9 months to 3 years (although, an estate may remain open for several years because of will contests or tax problems). The functions of an executor are varied, but generally your executor:

- Locates and files your will with the probate court
- Inventories, collects and sells (if necessary) your assets
- Pays legitimate creditor claims from assets of your estate
- Pays any taxes owed by your estate
- Distributes any remaining assets to your beneficiaries

### **What are the duties of an executor?**

Your executor acts in a fiduciary capacity. This means he or she must exercise a high degree of care, acting in the best interests of your estate, at all times. In addition, your executor is responsible for ensuring that all the proper tax returns are filed and that any estate taxes due are paid. Finally, your executor is accountable to the court and to your beneficiaries on completion of his or her duties.

### **How do you select an executor?**

Your choice of executor is a very important one. Typically, you want someone you can trust, who has a close relationship to your family, who has some understanding of tax laws, and ideally someone who has a keen sense of business (especially if you are a business owner).

Typically, spouses are named. Other choices include adult children, siblings or parents. Friends, attorneys and bank or trust officers are also common. You can name multiple executors to oversee different aspects of your affairs. However, co-executors may result in an increase in paperwork and a slowdown in the probate process.

Some of the attributes to look for in a good executor are:

- Ability to serve
- Willingness to serve
- Competency
- Trustworthiness
- Appreciation of your family's needs
- Knowledge and experience
- Geographic location (for practical situations)

### **Individual versus professional**

When choosing an executor, you can name an individual or a professional (e.g., an attorney or a bank trust department) to handle your affairs.

A family member or close friend has knowledge of your affairs and would take a personal interest in the settlement of your estate and the well-being of your beneficiaries. However, he or she may not be the best choice. Serving as an executor can be time consuming and stressful.

Some of the executor's duties are very demanding, such as preparing and filing tax returns, obtaining appraisals and making an accurate accounting. These are things

best left to professionals and an executor can hire the professionals needed to do those specialized tasks.

By naming a professional to manage your affairs, you gain some permanence. A professional executor is unlikely to refuse to serve or to resign. In addition, it may be easier to hold a professional executor financially accountable for mismanagement than a non-professional. A professional who makes money from managing estates will have the expertise as well as the legal, tax, accounting and computer abilities to do the job well and efficiently.

A professional executor will likely be more impartial to your beneficiaries or heirs. You also reduce the risk that your executor will make hardship loans to friends. However, by nominating a professional, you lose that personal touch from a friend or a relative who is not managing any other estates.

### **A few tips:**

- ✓ If you are assigning an individual to be your executor, be certain they are able and willing to serve in that role.
- ✓ Provide your executor with a copy of your will and review it with them.
- ✓ Provide them with any updates.
- ✓ Safe keep the originals (the executor will need the original copy it to carry out your plans).
- ✓ Remember you can change the executor if you choose or need to do so at any time.

If your family or friends have been asked to serve as an executor or are talking about getting their estate plans in order, the advisors at Charter Oak are always happy to be a resource on this topic. It is our pleasure to help so the people you care about can make informed and wise choices for themselves and their families.

*Charter Oak Capital Management is a registered investment advisor that provides retirement planning, financial planning and fee-based investment portfolio management to individuals and non-profit organizations. Our offices are located in Portland and Kennebunk, Maine and Portsmouth, New Hampshire.*

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