

WILLS

You Are Hired... Wait, Did I Even Apply?

No, you likely did not.

Most people don't apply to become an executor of an estate. An executor is responsible for administering the estate of a deceased person from the date of death until all debts are paid and all assets of the estate are realized and distributed in accordance with the terms of the deceased's will.

Some people do not even know they have been chosen until the person appointing them has died. Surprise! How is this possible? A person who makes a will, referred to as the "testator", appoints individual(s) or a corporate executor (for another blog) in the will to be the testator's executor(s). After the will is properly executed it is usually hidden away in a safe or secret place or locked away in safekeeping, maybe even at an ultra-secure lawyer's vault, where few people can see it or access it.

How can this kind of responsibility be imposed on you without your knowledge?

Even though it would be nice, there is no requirement in law in Ontario to notify someone that you are appointing them to administer your estate.

I would like to clarify, that even if you are appointed in a will as an executor, there is no legal obligation to accept the position. Moral obligations are another story. You will, however, need to decide immediately whether to accept it or not. Once you start acting as an executor and doing the work,

you are not allowed to just quit. A court order will likely be required to remove you from this job once you start. I wouldn't suggest trying to get fired either.

What if an executor were an actual job that you applied for? The job posting might look something like this:

Executor: No application or experience necessary

Job skills: _____

Ability to:

- Grieve and work simultaneously
- Maintain composure amidst family disputes
- Read through pages and pages of often technical legal language to understand what the testator intended
- Carry out the wishes of the testator, even if you don't agree with them
- Distribute potentially large sums of money to beneficiaries
- Be a brilliant detective and spend hours searching out every asset the deceased could possibly own
- Attribute an accurate value to random furniture, personal articles, and household items (did you ever watch *The Price is Right*?)
- Understand complex tax filings
- Anticipate and get ahead of unknown deadlines
- Complete forms and applications



Sandra Arsenault,
Law Clerk, Trusts, Wills, Estates and
Charities Group
Private Client Services, Toronto
Fasken Martineau DuMoulin, LLP

perfectly with no errors

- Comprehend technical legal language
- Pry necessary information from organizations with strict privacy policies
- Explain to beneficiaries who want their money why things take so long

Necessary attributes:

- Superior communication abilities
- Unwavering patience
- Masterful task management and prioritization strengths
- Exemplary organizational skills (so much paperwork)
- Empathetic, therapist-like listening skills
- Certified accountant level math skills
- Sensitivity to delicate family dynamics
- Immunity to criticism
- Pro-level teamwork skills (multiple executors **MUST** cooperate)

Remuneration (Pay):

- Sometimes expected to be done for free (usually by family)
- Not necessarily commensurate with experience
- The generally accepted percentage guidelines for calculating your compensation are based on the value of receipt and disbursements, but may not reflect the complexity of the work
- Not a guaranteed sum: payment amount to be determined (reduced)

by a multitude of factors

- Actual amount subject to approval by either the beneficiaries or a judge
- Must prepare detailed accounting records (no matter how good your math skills are) and keep track of all your time and efforts spent, to support your claim for compensation
- Most work must be done before any compensation is paid (could be years later)
- It is taxable income (of course)

Provisos:

- Must be available to do all necessary tasks and attend all appointments, usually during regular working hours, regardless of having a full-time job, family, or other obligations
- Quitting or giving up strictly prohibit-

ed, unless a judge agrees

- You are a fiduciary and will be held to that standard (see ability to comprehend technical legal language listed above)
- Inheriting another problematic, unfinished estate is a possibility (was the deceased an executor?)
- If anything goes wrong, you may be personally liable

If this sounds like your ideal job, there is no need to apply. Simply sit back and wait. One day, if you live long enough, or know enough people, or have a family, and are somewhat likeable, or even if you are not, this amazing job could be all yours.

Fortunately, you CAN hire professionals

to assist you, keeping in mind that any tasks undertaken by professional advisors which an executor could reasonably be expected to complete should be deducted from your negotiated compensation amount.

Written by Sandra Arsenault, Law Clerk at Fasken Martineau DuMoulin LLP. Sandra is an experienced law clerk having worked over 18 years as a legal professional in Toronto, Ontario, almost exclusively in Trusts, Wills, and Estates.

<https://www.fasken.com/en/sandra-arsenault>

www.linkedin.com/in/sandra-arsenault

This article was originally posted at www.allaboutestates.ca