

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-M-78 (2)  
Estate & Gift Tax  
July 31, 1978

Subject: Responsibilities, Functions and Authority of  
Executor's (rix) or Administrator's (rix)

Many inquiries have been received from the general public and from personnel within the Department regarding information as to the duties of executor's (rix) and administrator's (rix). In view of these requests, the following data has been compiled outlining the responsibilities, functions and authority of executor's (rix) and administrator's (rix).

When a person dies, the surviving spouse or some other survivor is faced with many questions, particularly that of determining the value of estate assets and the probable tax liability, which is often the largest expense facing an estate.

Generally, an executor is named in a decedent's Will to administer the estate and make distribution of properties as the decedent has directed. An "executor (rix)" is any person to whom Letters Testamentary (where a Will exists) have been issued by Surrogate's Court in the county of which the decedent died a resident. An administrator is usually appointed by Surrogate's Court if no Will exists, if no executor was named in the Will, or if the named executor cannot or will not serve. An "administrator (rix)" is any person to whom Letters of Administration have been issued by Surrogate's Court in the county of which the decedent died a resident.

If there are two or more executor's (rix's)/administrator's (rix's) and one dies, the survivor(s) continue to administer the estate without the appointment of a successor to the deceased executor (rix)/administrator (rix). If an executor (rix)/ administrator (rix) is acting as a successor or substitute, he (she) has all the powers of the original executor (rix)/administrator (rix).

If a decedent had property located outside the State in which the permanent home is located, more than one executor/administrator may be appointed. The person appointed to administer the estate in the State of the decedent's permanent home is called the "Domiciliary Representative". The person appointed to administer property in a State other than that of the decedent's permanent home is called an "Ancillary Representative". Ancillary Letters are issued to allow for the disposition of a particular asset located in New York State.

In general, both an executor (rix) or administrator (rix) perform the same duties and have the same responsibilities. Upon the issuance of "Letters Testamentary" or "Letters of Administration" by Surrogate's Court, the executor (rix)/administrator (rix) becomes an officer of the court.

A "voluntary administrator (rix)" is a person who qualifies and undertakes to settle the estate of the decedent without the formality of court administration. He must be a domiciliary and cannot administer estates having a gross value of over \$5,000 in personal property.

Basically, there are five responsibilities and functions including authoritative actions, of an executor(rix)/administrator (rix):

1. collect the decedents assets
2. take care of decedents assets until the estate is settled
3. pay claims and debts
4. compute and pay "death taxes"
5. distribute the estate to the beneficiaries

These five duties, stated in very simplistic form, entail many burdensome and time-consuming tasks. Because many of these duties are of financial importance, an executor (rix)/administrator (rix) may be liable to pay for losses incurred by his errors out of his own funds. To explain in more detail the responsibilities, functions, and authority of an executor (rix)/administrator (rix), the following information is given:

1. Collect the decedents assets
  - a. Locate the Will and file it for probate.
  - b. Locate safe-deposit boxes and bank accounts.
  - c. Locate and take charge of all his assets: stocks, bonds, notes, bankbooks, automobiles, personal effects, boats, real estate, etc.

Every executor shall keep property received as executor separate from his individual property.

- d. Locate all supporting papers for decedent's assets: deeds, abstracts, title policies, cost records, broker's statements, casualty insurance policies, income tax records.

To accept additions to any estate or trust from other sources. Any property due the Estate or Trust.

- e. Inventory all assets and have them appraised.
- f. File claims for medical and life insurance benefits.
- g. File claims for pension, veteran's, Social Security and similar benefits.
- h. Determine what assets are to be included in the taxable estate - i.e. the executor (rix)/administrator (rix) must determine which jointly owned assets are subject to the consideration - furnished test and which are "qualified joint interests". Also, to determine whether the special "use" election is appropriate.
- i. Collect (going to court if necessary) debts owed decedent.
- j. Determine where decedent was legally domiciled.

2. Take care of decedents assets until the estate is settled

- a. To invest and reinvest property of an estate or trust under the provisions of the will, deed or other instrument or as otherwise provided by law. If the will provides that investments are to be made, the executor has the authority to make the decision as to what investments to make.

Manage his securities. Study the stock and bond markets. Buy, sell, hold, or convert securities; exercise or sell subscription rights -- all according to the requirements imposed by law upon fiduciaries. Keep complete and accurate records.

- b. To effect and keep in force any insurance to protect the property of the estate or trust and to protect the executor. The executor should protect the property of the estate with proper casualty insurance and effect a surety bond on his own behalf.

If he owned real estate: complete unfinished building projects; make sure insurance is adequate and in force; pay property taxes on time; collect rents; make repairs; arrange for maintenance; negotiate leases.

- c. With respect to Estate Property owned but not specifically disposed of:
1. take possession, collect rents from and manage
  2. to sell at public or private sale on such terms that in his opinion will be advantageous to all interested parties
  3. to lease same for a period, not exceeding three years
  4. to mortgage the same
  5. if any property is prohibited by the terms of the will from these powers, the power nonetheless exists upon the approval of the Surrogate
  6. the executor may exercise all powers granted by Section 11-1.1 of E.P.T.L. notwithstanding the effect the will has on the birth of a child after its execution or of an election by a surviving spouse.

This section gives the executor authority to manage property of the estate and conduct transactions in a manner beneficial to the estate. He can use his judgment for all such business matters.

- d. To make ordinary repairs to the property of the estate. Any repairs needed for the preservation of the property in his own judgment.
- e. To grant options for the sale of property for a period not exceeding six months. If there is a prospective buyer interested in any property of the estate the executor may, if it will not jeopardize the interest of the estate, grant an option for a sale.
- f. With respect to any mortgage held by the estate to continue same or to foreclose if executor deems it to be advisable.
- g. To employ any bank or banking institution to act as custodian of any stock or other securities held and the cost shall be chargeable to the estate.
- h. To cause any stocks or other securities to be registered and held in the name of the nominee without disclosure of fiduciary relationship.
- i. To vote as a representative in person or by proxy shares of stock or other securities held by him as executor.
- j. To pay calls, assessments and other charges against or on account of shares of stock if the executor deems payment expedient and for the best interest of the estate.
- k. To sell or exercise stock subscription or conversion rights. This gives the executor the right to act for the decedent in all matters of stock options owned by the decedent and under his jurisdiction.
- l. To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate. The executor has the authority to execute any document for transaction for the benefit of the estate.
- m. If he was sole owner of a business -- take charge of it; if he was co-owner, assume your share of management responsibility.
- n. Deliver specifically bequeathed personal effects to the legatees, collecting appropriate inheritance taxes from them, when applicable.

3. Pay claims and debts
  - a. To contest, compromise or otherwise settle any claims in favor of the estate or in favor of third person against the estate.  
  
Require evidence they're correct and be sure they're legally enforceable before paying any claims or debts.
  - b. To join with the surviving spouse in the execution and filing of joint Income Tax Returns for any period prior to the death of the decedent and pay any income or property taxes due.
  - c. To pay all other reasonable and proper expenses of administration from the property of the estate including expenses for continuing his bond and any reasonable counsel fees.
  - d. An executor named in a will cannot pay any expenses before probate except reasonable funeral expenses.
  - e. He is liable for all distributions made before publication to creditors.
  - f. Determine how to raise necessary cash and complete required sales of securities or other property.
  - g. Obtain receipts and vouchers to file in probate court, keeping careful records.
  - h. Contest any dubious claims and require them to be proved in court.
  
4. Pay death taxes
  - a. An executor is liable for all Fiduciary Income and Estate Tax Returns to be prepared and filed on time. He is also liable for timely payment of all Taxes.  
  
The executor (rix)/administrator (rix) of an estate of an individual dying after December 31, 1976, must, for Federal purposes, furnish written information on the carryover basis in each carryover-basis asset to each recipient of property from the decedent and to the Internal Revenue Service.
  - b. Determine correct valuation of all assets including unlisted securities, real estate, business interests, jewelry, stamp or coin collections, antiques, questionable debts due decedent, personal effects, boats, works of art. Satisfactory proof must be available, upon request, to substantiate these values.
  - c. Determine whether to use "date of death" valuation of assets or "alternate date" (six months later).
  - d. Choose whether to deduct administration costs from the estate's income tax or from the estate tax.
  - e. Determine all allowable exemptions and deductions, especially the "marital deduction".
  - f. Determine how to raise required cash for taxes; make necessary sales of assets.
  - g. Procure final audit by tax authorities.
  - h. Contest improper assessment of any additional taxes, going to court if necessary.
  
5. Distribute the estate
  - a. To transfer undivided interest in property in which fiduciary had an undivided interest. If decedent owned property as tenant in common with the executor, he can marshal these assets.

- b. To pay any of the following payable to an infant or incompetent, to the father or mother or to some competent adult person with whom the infant or incompetent resides who has an interest in his welfare, provided the proceeds does not exceed \$1,000.00:

- Legacy
- Distributive Share
- Proceeds of Action for Wrongful Death
- Proceeds of Action for Personal Injuries to Infant

- c. To distribute in kind any property at its fair value at the date of distribution. If property is specifically bequeathed and can be identified, the executor can distribute same.
- d. Any deed, mortgage or lease executed by one or more but not all of the executors conveys full title and interest of the testator and is effective as if all executors joined.
- e. Determine what to sell to pay cash bequests.
- f. Determine distribution of all items of property in residue of estate: who gets "A" Company stock and who gets "B"; who gets grandmother's clock and who gets her oriental rug.
- g. Obtain receipts and releases from distributees.
- h. Prepare and file final accounting with Surrogate's Court, if any.