

When a loved one dies, administering the trust or estate is often the last thing on the minds of the family. Having an experienced guide and advocate during the process can make a significant difference between confusion and an orderly transition.

As you try to make sense of your loved one's death, you may be faced with making decisions about your loved one's property and possessions. What belongs to you? What goes to the children, other family members, and friends? What is available to pay taxes, bills, and other obligations? It may be of comfort to know that you don't have to answer these questions all by yourself.

Be aware that the estate settlement process can be complex, both legally and emotionally. There can be severe financial repercussions if it is not settled in accordance with applicable state and federal laws. It can also be a source of great strain on family relations. Therefore, it's a good idea to seek experienced professionals who can provide objective advice and guide you through the process. There are many details to consider and the knowledge of a professional estate administrator who focuses on this area can be invaluable. Comerica can help efficiently settle an estate by working with your advisors to assist with tax and legal concerns and provide continuity with your existing Financial Advisors to maintain the investment management relationship.

What are some of the key components of estate settlement and what are the responsibilities of settling the affairs of a decedent? One of the questions most frequently asked in relation to estates is "What is the difference between executors and trustees?"

- Executors are the people who organize your affairs after your death.
- Trustees are the people or entity that administer/oversees the trust that your will creates in accordance with your wishes.

But it isn't quite that simple and it is no wonder that people sometimes get confused about the roles and responsibilities. We can try to explain it by answering some of the different ways that people ask, such as:

- What do executors do?
- What do trustees do?
- Are they the same thing?
- Do I need both?
- Do I need to create a trust in my will?

In order to explain, we first need to discuss how a will works. When a person dies, everything that is owned – property, possessions, money, stock shares and everything else is described collectively as their estate. The purpose of a will is for a decedent to determine how they want to distribute their estate after their death. The decedent can decide to leave amounts of money, or particular property, or specific possessions to named people or charities, which are called specific gifts. The remainder of the will that is not distributed through specific gifts, is described as the residuary estate.

The residuary estate is often called the "trust fund." It is held by the trustee until it is distributed to the people who will inherit it.

Executors have two main responsibilities:

- Ensuring that the estate is settled according to the law; and
- Carrying out the wishes set forth in the will.

One of the first actions the executors must do is to value the estate by marshalling assets and determining liabilities. This must be done to determine whether any inheritance tax is payable. In most cases, the inheritance tax must be paid before a grant of probate can be obtained. It is probate that gives them the permission to distribute your estate.

- An executor publishes a notice of the death to inform creditors and other interested parties.
- Executors typically collect all assets of the estate, file an inheritance tax return and pay any inheritance tax due.
- Executors will open a new account for the purpose of managing the estate. Most banks are quite familiar with executor accounts, which remain open until the estate is completely distributed. The executor must apply for a grant of probate to close the estate and distribute assets as instructed by the will. Only when that is done can they go on to distribute the estate as instructed by the will. Before any gifts are paid out, the executor must:
 - Ensure that all debts are paid, and other liabilities are met; and
 - Ensure that outstanding funeral expenses are paid out of the estate.

Once this is completed, executors distribute the remaining assets which includes transferring specific gifts of money or possessions to the beneficiaries. For the residuary estate, it depends on what the will provides. If the will creates a trust with the residuary estate, then remaining assets must be transferred to the trustee. If the will does not create a trust, assets will be distributed to the beneficiaries.

Often, the executors and the trustees are the same person or entity, but the role of executor and trustee are unique. Until the estate is distributed, the executor must ensure that any ongoing bills are paid, and that the property and assets are maintained. The role of an executor comes to an end once the assets of the estate have been distributed (either outright to beneficiaries or to the trustee).

If there is no will, someone still must be responsible for dealing with the affairs after death. Such a person is usually referred to simply as an “administrator.” If you are considering creating a trust in your will, you should think about appointing at least two executors so that they can then be the trustees of the trust. This is where appointing a corporate trustee to handle estate settlement will provide continuity for the family and the investment management.

Who should I appoint as executor?

Settling an estate can be complicated, time consuming, and stressful. Often, family members may be unprepared to deal with the complexities and numerous tasks involved. There is a lot to be said for having beneficiaries supported by someone who is not close to the family, because the task can be onerous and sometimes distressing. Rather than simply choosing your family member, consider whether it would be sensible to appoint a second executor to help. Many people choose professional executors, who are experienced in all aspects of estate administration.

What do trustees do?

The roles of executors and trustees are different, even though the same person may do both. The role of a trustee of a testamentary trust starts after the administration period of the estate. If assets in the estate are to be held in trust, the executor transfers assets to the trustees of the trust, who then becomes the legal owner of the assets and manages them in accordance with the terms of the trust.

This explains why a will that contains a trust often refers to the ‘executors’ and then, later in the will, to the ‘trustee’. If the will creates a trust of the whole estate, or the residuary estate, then the residuary estate is usually referred to as the ‘trust fund’ in the will. If there are any complications or unusual features in the estate, a trust is often the best option for administration, and the trustee has more power to take care of the assets.

Trustee Duties

Whatever kind of trust is created by a will, the trustee has many duties and powers. Some of those are described by the trust document – which is often the will itself.

The trustee must act in accordance with the terms of the trust and the applicable state law. The trust may include powers relating to:

- Investment;
- Distribution of trust assets;
- Management of property;
- Use of capital; or
- The exercise of discretion in relation to a discretionary trust.

The will often contains language which states that the “Administrative Trust” provisions are to be treated as part of the will, and this provides the trustees with fiduciary guidelines and responsibilities.

What is an Administrative Trust?

Professional trustees can be appointed in a will, and the Administrative Trust provisions allow professionals to charge for their services. Many people choose the executors to also serve as trustee – and many wills include this as a standard provision. This is worth remembering when considering appointing corporate trustees as executors, because you may also be appointing the trustees, for which there may be additional charges if the trusts are ongoing.

An example of Administrative Trust language found in a will or revocable trust may state the following:

After my death and before the distribution of trust property as provided by the subsequent articles of this Trust, the trust will be an administrative trust, but may continue to be known as the John Smith Living Trust. The administrative trust will continue for a reasonable period necessary to complete the administrative tasks set forth in this Article.

My Trustee may pay from the trust property:

- *Expenses of my last illness, funeral, and burial and cremation including expenses for memorial and memorial services;*
- *Legally enforceable claims against me or my estate;*
- *Expenses of administering the trust and my estate; and*
- *Court-ordered allowances for those dependent on me.*

Once the trust's debts and expenses are satisfied, the remaining assets can be distributed to, or for the benefit of, the trust's beneficiaries. Many trusts direct that the assets are distributed directly to the beneficiaries as quickly as possible. However, trusts can also include provisions that delay distributions for a specific period, e.g. until beneficiaries reach a certain age, or for several other reasons. As a result, some trusts remain open for an extended period following the grantor's death. The trustee is required to follow the trust agreement's distribution provisions.

Once the trust has achieved its purpose, it should terminate. Generally, the trust will terminate after the trustee has paid all debts and expenses and distributed all assets. Unlike a probate estate, a trustee does not require a court's permission to distribute the trust's remaining assets to the beneficiaries. The trustee should send the beneficiaries a written notice of the trust's termination and include an accounting of how the trust's assets were managed and distributed.

At Comerica, comprehensive estate settlement services are designed to help fulfill your wishes and offer your beneficiaries the support and guidance they need during a difficult time.

Our Estate Settlement team includes thirteen professionals, many of whom are former practicing attorneys. This team is located in Comerica's footprint throughout the United States and settle well over 150 estates per year. They have a broad range of fiduciary expertise to assist with the complexities of settling a probate or trust estate.

Want to Know More?

Want to know more about this topic or any other, Comerica welcomes the opportunity to help. Contact your Comerica Relationship Manager or [request a Comerica Wealth Professional contact you.](#)