

# Do You Need to Name an Executor of Your Estate? Seven Questions and Answers to Help You Decide.

***Estates vary regarding valuation and complexity. In its simplest definition, if you own assets, you have an estate. If you also have debts and/or a will, you may need someone to settle your estate when you die.***

“Most individuals understand the importance of creating a financial strategy or a life care plan<sup>1</sup> for their family, especially when a family member has special needs” says Connor W. Kavanaugh, who is a Special Care Planner<sup>2</sup> with MassMutual-Oregon<sup>3</sup> in Lake Oswego, Oregon, a general agency of Massachusetts Mutual Life Insurance Company (MassMutual). “However, not everyone thoroughly understands the duties or value of an executor. Selecting the right person can make a big difference in your family’s experience during the settlement process. The right executor can help minimize complications and manage the time it takes.”

## 1 What does an executor do?

Basically, an executor, upon your death, reviews your financial and legal situation – the big picture and the details – and takes all the necessary action, including hiring professionals to assist as needed, to ensure that:

- your intent, as written in your will, is carried out,
- your estate (your finances and your property) is maintained until the settlement is complete,
- the bills of the estate are paid in a timely manner,
- final tax returns are filed and tax payments are made, and
- he or she represents you and your estate in court and in relationships with all others (professionals, family, and friends) in a respectable manner.

## 2 How and when is an executor named?

Choose your executor when you’re creating or reviewing your financial strategy. Work with an attorney and a financial professional who are skilled in serving people in the special needs community. They can help ensure that all your family members’ interests are considered and the family’s financial strategy will benefit all. “Once your strategy is in place and your executor is chosen, review your decisions at least annually,” suggests Kavanaugh. “So many things can change in a year, which will affect your strategy. You may also realize someone else might make a better executor, or something in your executor’s life has happened that makes that person unable to do the job. Establishing annual reviews gives you the opportunity to make changes.”

After you’ve determined who your executor will be, you’ll name that individual in your will. You might also name alternatives because your primary choice may be unable or unwilling to assume the responsibility when the time comes. An alternate can assume the role, eliminating the risk of having a court appoint executor. You may also name co-executors, which can be helpful if they work well together and share the responsibilities. But keep in mind that having multiple executors can complicate things. For example, whenever the executor’s signature is required, all executors’ signatures are required.

If you don’t name an executor, one will be appointed by the court when you die. The court-appointed executor may not know you, your family, your wishes, or your family’s needs.

## 3 What issues regarding special needs are important to consider when choosing an executor?

“As you know, the expenses of your family member with special needs don’t stop while your estate is being settled,” says Kavanaugh, “so carefully select how that person will inherit money, and be sure your executor knows what you’ve done. It will help your executor prioritize tasks.” Retirement accounts and life insurance policies aren’t subject to probate laws, so people named as beneficiaries can get their proceeds quicker. “It will still take time to get and submit death certificates to claim the benefits, but you won’t have to wait for the entire estate to be settled,” explains Kavanaugh.

Naming a special needs individual as beneficiary on life insurance and retirement accounts could jeopardize their benefits. Eligibility is lost if the person’s assets exceed \$2,000. “You might consider establishing a special needs trust with the trust named as beneficiary of any inheritance,” suggests Kavanaugh. “If the inheritance includes assets other than from a retirement account or insurance policy, the funds could be held up in probate. Your executor could request

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the court to expedite the process, but because there's no guarantee it will be approved, it's best to do proper strategizing in advance."

Consider choosing one person as both executor of your estate and trustee of the special needs trust. If you decide to have different people in these roles, open communication between them is valuable. For example, your executor may realize, after determining the fair market value of your assets, that proceeds from a home sale may not be as expected and may not fully fund the trust as planned. Your executor can let the trustee know so he or she can discuss alternatives with other family members or plan to be more cautious with spending.

#### 4 Whom should you choose?

Usually a family member (spouse, sibling, child) or a close friend is chosen. In some cases, you might select a professional, such as your attorney or accountant. Banks and trust companies also have professionals who can serve as executors. Whatever your choice, you should reexamine it periodically to determine if it's still the best

choice you could make. For instance, what if your executor predeceases you? Or what if the bank or trust company you intended to use merges or no longer provides the service?

"In working with families with special needs," says Kavanaugh, "I've found that often a family can do 99% right, and still that 1% the family does incorrectly can unravel the good. That's why it's so important to work with financial and legal professionals who understand how families with special needs are affected by rules and regulations regarding financial strategies, legal documents, and probate courts. We can also help you understand why you may need an executor and help you develop criteria for selecting one.

#### 5 What traits should an executor have?

Your executor should:

- **understand your wishes** – Meet with and communicate with your executor during your lifetime so he or she knows your intentions, the level of work and time settling your estate will take, what businesses and organizations you have relationships with, and where documents and records are kept.
- **be honest and dependable** – Choose someone who can be trusted to take on the responsibility and do it to the best of his or her ability.



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- **have some legal and financial savvy** – Expertise isn't necessary, but your executor should know enough to understand the policies, documents, investments, and accounts (with help from professionals, if need be) and pay bills, close accounts, complete paperwork, represent you in court, and so forth.
- **be a good communicator** – Your executor should be able to deal with professionals, family members, and friends, especially if some family members are disgruntled, impatient, feeling slighted, or impeding progress.
- **be organized** – Much of the task involves keeping paperwork organized, taking notes, making lists of tasks and/or questions to ask, and managing other administrative details. It can streamline the process when information is organized and readily available.
- **live nearby** – Settling an estate may include attendance at numerous meetings and in court. Ease of travel will be less demanding physically, emotionally, financially, and on the executor's time. Also state laws may require the executor to live in the state where the estate is being settled. If you know you or your executor will be moving to another state, take precautions and make the necessary changes.

## 6 Why might someone I choose not be eligible to assume the responsibility?

An executor must be a U.S. citizen who's at least 18 years old and does not have a felony record. Your state laws may also restrict eligibility. As previously mentioned, state laws might require the executor live within the state of the deceased. Additionally, the law may require an executor be bondable. Consult an attorney who knows how your state laws affect you.

## 7 Can the executor also be an heir?

"Yes," says Kavanaugh. "In fact, sometimes choosing an executor who'll also inherit assets from you is a smart choice. It can motivate the heir-executor to make an effort to settle the estate promptly. But wanting to speed up the process might also pressure an heir-executor to take actions that could diminish the overall estate value. For example, by selling a house at an under-market price. Ideally, the heir-executor will want to combine diligence with speed.

Remember, if you have assets, owe money, or have a will, you should consider naming an executor. The complexity of your state laws or your finances may also dictate the need for an executor. Talk to financial and legal professionals who serve the community of people with special needs. They can help you decide.

<sup>1</sup> A Life Care Plan is a coordinated program of future care planning, financial and legal strategies for people with disabilities and their families. A Life Care Plan continually changes throughout an individual's lifetime and is provided by a team that may include your legal and tax advisors as well as insurance and investment professionals.

<sup>2</sup> The Special Care Planner, a title used by MassMutual financial professionals, who have received advanced training and information in estate and tax planning concepts, special needs trusts, government programs, and the emotional dynamics of working with people with disabilities and other special needs and their families. The certificate program was offered by The American College in Bryn Mawr, PA, exclusively for MassMutual financial professionals. Additionally, a designation of Chartered Special Needs Consultant (ChSNC), which evolved from the certificate program, is now offered through the American College for financial professionals. MassMutual financial professionals who have completed the certificate program, or received the ChSNC designation can use the Special Care Planner title.

<sup>3</sup> [www.massmutual.com/connect-with-us/agencies/massmutual-oregon](http://www.massmutual.com/connect-with-us/agencies/massmutual-oregon)

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A Special Care Planner through MassMutual's SpecialCare<sup>SM</sup> program can assist parents in drafting Letters of Intent and can help make a difference in the quality of life for an individual with special needs, their caregiver and other family members. Through SpecialCare you will learn valuable financial strategies, identify financial strategy solutions, access vital information, and meet certified specialists who will work with you and your professional advisors – your banker, accountant or financial planner, lawyer, social workers and health care providers – to review your financial picture and offer options to fit the needs of each situation. For more details, visit MassMutual's website at <http://www.MassMutual.com/specialcare>, or call 1-(800)-272-2216.

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