

If you are the beneficiary of an estate, it may often appear that you are at the mercy of the executor, regardless of how lazy, incompetent, or even dishonest that person may be. However, if the situation is sufficiently serious, there are legal remedies available to spur the executor to take the correct action, or to remove him or her entirely.

The lazy executor

Some executors refuse to do anything on a reasonable timeline. They take their time applying for probate, they move slowly to deal with the assets, or they drag out the distribution of the estate – or, sometimes, all three.

As a beneficiary, particularly a beneficiary with financial need, this process can be extremely frustrating. Even beneficiaries who do not need the money right away may worry that delays could cause substantial loss to the estate – say, if the price of real estate falls before a valuable property is sold, or the ongoing costs of maintaining the property longer than necessary start to add up – or that the executor may be stalling on purpose to hide some nefarious scheme.

The law offers the following remedies for a beneficiary dealing with a lazy executor:

- If the executor has not applied for probate, the beneficiary can file and serve a citation on the executor, which requires a response within 14 days. If no response is received, the executor is deemed to have renounced the executorship;
- If the executor has not produced accounts of his or her dealings with the estate, a beneficiary can bring an application to compel the executor to produce accounts;
- If the estate is ready to be distributed, but the executor is delaying distribution for some reason, a beneficiary can apply to the Court for an order to grant an interim distribution; and,
- The Court has the power to remove the executor for truly egregious delays, and to appoint someone else in his or her place.

The incompetent executor

Beneficiaries can apply to the Court for an order removing a person as executor for incompetence. An example of such a situation would include where the executor has lost substantial estate assets through unreasonable investment decisions, or spends estate funds wastefully without getting proper value.

However, there are two difficulties with removing incompetent executors:

- Courts are careful about exercising this power, and are unlikely to do so unless the impugned decision of the executor was clearly foolhardy;
- Beneficiaries often encounter the “barn door” problem¹ –that is, by the time there is sufficient evidence to show that the executor’s conduct was unreasonable, the loss will likely have already occurred.

The dishonest executor

Executors often find themselves in conflict between their duty to the estate and their own personal interests. There are innumerable ways in which this can occur. For instance, an executor may owe money to the estate from a loan made by the deceased in his or her lifetime, and face a decision about whether to disclose that loan or how to characterize it. Executors may also see the estate funds as possible investment capital for a business run by the executor or an executor’s family member.

¹ As in, “there’s no point closing the barn door after the horses have already escaped.”

Executors who come down on the side of their personal interests – refusing to disclose the loan, or taking estate funds to make investments in their own business – have, generally speaking, breached their fiduciary duties to the estate. Beneficiaries who become aware of this conduct have several options to deal with it, including three principal options:

- Bring an application to compel the executor to pass his or her accounts, which may reveal more information about the executor’s wrongful conduct;
- Make an application to remove the executor;
- Bring a lawsuit against the executor.

The best option depends on the circumstances. Frequently, a combination of these options can be effective. For instance, compelling the executor to pass accounts may yield enough information to decide whether the correct remedy is simply to remove the executor, or if a lawsuit is necessary.

Summary

Beneficiaries often experience frustration when dealing with estates. Sometimes, it is the nature of the estate that caused the frustration, but on some occasions executors unreasonably delay administration of the estate, or act incompetently or even dishonestly. Where these problems are sufficiently serious, beneficiaries have many legal remedies at their command, from seeking orders prompting the executor to do something, removing the executor, or even launching a lawsuit against the executor.

If you find yourself in such a situation, a consultation with a lawyer experienced in probate matters or estate litigation can often determine whether there is a case worth pursuing, and, if so, how to navigate the various options to pursue it.

For assistance with estate planning or administering an estate, contact a member of our experienced estate team at Fulton & Company LLP.



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