

## Should your client use a corporate executor?

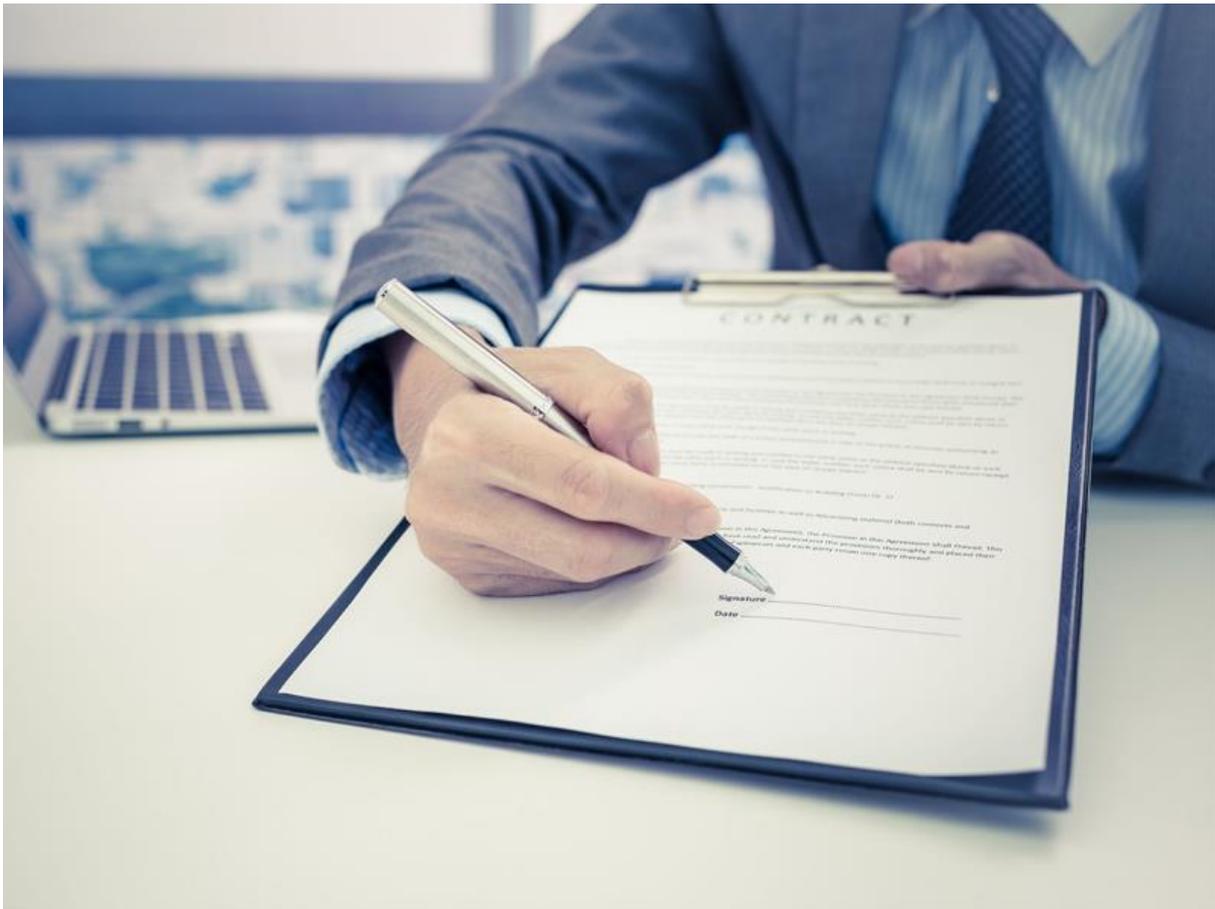
Hiring a professional to administer the terms of a will can be expensive. But in cases involving a large, complex or potentially contentious estate, an experienced hand can be well worth the cost

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If you're consulting with a client about who to name as executor of his or her will, you might do well to suggest your client consider choosing a corporate trustee rather than a family member or friend.

Although the fees associated with appointing a corporate executor may appear to be high, they could be well worth it in cases in which a large, complex, or potentially contentious estate is involved.

“[Appointing a trust company] removes a lot of the burden from family at a time when a family should be grieving,” says Keith Masterman, vice president of tax, retirement and estate planning with CI Investments Inc. in Toronto. “And it removes from the family something they might end up fighting over.”

For a fee — the industry standard is up to 5% of the assets that pass through the estate — a corporate executor can step in and administer all aspects of a deceased client’s estate. These tasks are as varied as making sure utility bills are paid for the deceased’s home while the estate is being administered, locating and communicating with beneficiaries, and making sure beneficiaries receive their entitled distributions.

A client can appoint a corporate trustee in the will to serve as a coexecutor along with a family member or a friend in order to ease some of the administrative burden on the appointed family member.

Trust and estate experts, such as Christine Van Cauwenberghe, vice president, tax and estate planning, with Investors Group Inc. in Winnipeg, are seeing an increasing number of estates — in particular, larger estates or those involving property in multiple jurisdictions — for which a corporate trustee should be considered.

“There are a lot of high networth people out there with complex assets, such as art collections or more sophisticated investments,” Van Cauwenberghe says. “They just don’t believe that their families have the skill set to manage those assets, [which] need professional management.”

Trust companies report increasing interest in the use of their trust and estate administration advice and services, including for the role of corporate executor.

“The number of wills in which we were appointed [as corporate executor] last year was up well over 100% year-over-year,” says Leanne Kaufman, head of estate and trust services with Royal Bank of Canada’s (RBC) wealth-management division in Toronto. “That trend could be attributed to increased awareness of the corporate

executor option, generally, or it could be the closer working relationship we have with our advisor partners at RBC.”

Roxana Tavana, president and CEO of Bank of Nova Scotia Trust Co. in Toronto, says her firm increased the number of estate and trust consultants on staff last year by 10% to meet growing client demand.

### ***FAMILY DYNAMICS***

One reason for that increased interest, Tavana says, is that family structures are becoming more complex and potentially problematic for estate administration.

“Second marriages and blended families might necessitate having an impartial corporate executor in place,” Tavana says. “That’s really to ensure harmony among children and other family members.”

As an example of how family dynamics can come into play, Masterman offers the scenario of two sibling beneficiaries: the older sibling receives money in a will directly; the younger sibling is left money in trust, with the older sibling as trustee.

In this scenario, the younger sibling now must ask the older sibling for any extra distributions from the trust, creating a “babysitter” situation that could lead to conflict.

“When I’m treating one child differently than another, I might want a professional trustee [to manage the trust] because it keeps peace in the family,” Masterman says. “I don’t care if both my kids end up hating the corporate trustee, but I do want them to love each other after I die.”

A corporate executor also will assume all the potential liability involved in the administration of an estate, relieving an individual executor of that risk. Beneficiaries can sue an executor they believe to be negligent.

“We see more estate litigation these days, just because of the massive amount of wealth that is being transferred,” says Ambie Edgar-Chana, a lawyer with Edgar Chana Law, a firm in Toronto that specializes in estates, trusts and patents.

Corporate trustees can ensure continuity in an estate's administration, which may be an important consideration when trusts are involved, says Maria Velichko, associate lawyer with Wilson Vukelich LLP in Toronto: "A client can appoint an individual executor, but that person will likely have to retire at some point."

### ***FAMILY IN OTHER LOCALES***

Appointing a corporate executor may be the best alternative for a client for whom there's no suitable family member available in the jurisdiction in which that client resides.

If your client names an executor who lives in another country, or even in another province within Canada, troublesome estate administration and tax issues may ensue. This situation poses a particular problem for new immigrant families to Canada, Van Cauwenberghe says, particularly in cases in which all the adult relatives live in another country.

"These families are looking for solutions in terms of what would happen at the time of death," Van Cauwenberghe says.

### ***IT COMES AT A COST***

Although corporate executors may be increasingly useful, costs remain a stumbling block for many clients. Each of the big Canadian banks has a trust company subsidiary, and there are various independent firms in the market. These firms typically charge a one-time fee based on a percentage of the assets in the estate, a rate that typically declines for larger estates.

For example, a trust company might charge 4.5% on the first \$500,000 in an estate and a progressively lower percentage rate on estate amounts above that threshold.

Some trust companies will accept appointments only from estates that have a value of at least \$500,000; others require at least \$1 million. Or, the trust company may set a minimum fee for estate administration, which could be in the \$15,000-\$20,000 range.

In addition to the estate administration fee, there may be extra fees associated with items such as legal work on behalf of the estate. If there is a trust established in the

will that the trust company is to manage, an annual administration fee plus investment management fees will be charged.

Fees may be negotiated, depending on factors such as the relative complexity of the estate or whether your client has other business with the trust company or its affiliated firms.

Ted Rechtshaffen, president and CEO of TriDelta Financial Partners Inc. in Toronto and an estate planning specialist, often discusses the option of using a corporate trustee with his clients. Many decide against it because of the cost.

“Clients have to ask themselves: ‘Are the risks of not choosing a corporate executor greater than the cost of the fees?’” Rechtshaffen says. “The bar is set pretty high in terms of the cost. However, there definitely will be times when they’ll be better off with a corporate trustee than the alternative.”

If an estate administration case appears to be fairly straightforward, your client may decide that appointing a family member or friend as an executor rather than a trust company will be entirely appropriate, says Sam Febbraro, executive vice president of advisor services with Investment Planning Counsel Inc. in Mississauga, Ont.

“If the family dynamics are not hostile,” he says, “if the assets in the estate are fairly liquid and simple; if there has been estate planning done in advance and intentions communicated to family members; then perhaps a corporate trustee isn’t necessary.”

### ***A HUGE AMOUNT OF WORK***

A family member or friend who acts as executor has the legal right to ask for and receive compensation for administration of the estate, although many choose not to charge a fee.

“People need to understand that [estate administration] is a huge amount of work,” Van Cauwenberghe says. “If an estate is going to pay an amount, anyway, it might as well pay it to someone who knows what they’re doing rather than to someone who is not doing a very good job of it.”

If an executor grossly mismanages the estate, beneficiaries may choose to sue. As legal costs add up, an estate can become depleted well in excess of the cost would have been to appoint a corporate trustee in the first place, Van Cauwenberghe says.

If your client does choose to appoint a family member or friend as executor, and that individual needs help in managing the estate, the executor can choose to engage a trust company to assist in the administration, paying the firm out of his or her estate compensation based on the level of help needed.

Ultimately, however, the executor remains liable for the estate administration.

“We do a [cost] proposal each time based on the situation, depending on what there’s left to do,” Tavana says. “Sometimes, executors come to us halfway through [the estate administration]; sometimes, they come to us at the beginning.”

### ***THAT PERSONAL TOUCH***

Another potential drawback to appointing a corporate executor, for some clients, is that a trust company won’t replace the personal sensibility that a family member or friend might bring to administering an estate, Masterman says.

For example, a corporate trustee won’t know if a personal item in the deceased’s home had a special sentimental value to the family — unless that has been noted in the will — the way an individual executor might.

“The trust company is a third party that doesn’t have a personal relationship with me,” Masterman says. “That’s both an advantage — I know that it’s going to administer the estate to the letter of the law — but it’s also a disadvantage because it hasn’t walked a mile in my shoes, so to speak. The [trust company] doesn’t know what my values are.”

Some clients believe that they are bestowing an honour on whomever they choose as executor, and some family-member executors will view it that way, too.

If your client chooses to go with a corporate executor, communicating that decision — and the reasons why that decision was made — is a good idea, Tavana says.

“We understand that executors view their role as an honour, and it should be,” she says. “But it’s also a monumental responsibility. The way we position things with our clients is that we’re really just here to help and alleviate the burden.”

In fact, the biggest favour your client might do for the family is relieving them of that burden altogether.