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THE EXECUTOR'S ROLE

Q: My mother recently passed away and my sister was appointed her Executor under her will. My father passed away several years ago. I am a beneficiary under my mother's will. My sister and I have fallen out of sorts over the years and I fear that she will not treat me properly and will do things behind my back regarding my rights under my mother's Will. Is there anything I can do to prevent this?

A: This is a good question, and one that I hear often. First, let me say that your situation occurs more often than not. It seems that simmering family issues find no better means of uprooting than in the probate process after the death of a family member.

There are several things you should be aware of which may ease your concerns. First, what is an Executor and what does that person do? An Executor, in its simplest definition, is an arm of the Probate Court responsible for various tasks. She must locate and determine the assets and debts of the estate; locate insurance policies and confirm payouts; locate beneficiaries, prepare and file the required probate forms, and tax forms and returns. The Executor will make the distributions proposed under the Will & authorized by the court and finalize the estate in accordance with the directives of the court.

As you can see, the Executor has a significant amount of accountability to the estate and assumes a big responsibility when they accept the appointment. To that end, because there is so much involved, the Executor has quite a bit of contact with the Court. As an arm of the Court, so to speak, the Executor has a fiduciary responsibility to both the Court and the beneficiaries (and others). A fiduciary responsibility means that they are held to a high standard of trust and honesty.

Due to the fiduciary responsibility, your sister simply cannot act improper towards you because everything she does as an Executor is overseen by the court. The Executor must file numerous documents with the Court, as well as accountings which clearly show all of the assets and how they are proposed to be distributed.

Of most importance to your question, is the fact that you, as an heir and proposed beneficiary have the right to question everything the Executor does regarding the estate and if you see something that appears improper, you can make a request for clarity or seek a hearing with the court.

Many of the situations encountered under this scenario are typical of sibling disputes. Accusations of entitlement often fly across the room, such as loans made by mom and dad to a sister or brother to buy a house while the younger (or older) brother still rents; or the loan for college tuition that was never paid back. Another

classic is the sibling who feels a greater entitlement to the estate assets for the time spent caring for the needs of the decedent that no one else gave.

Another often encountered scenario is the person suspected of removing assets of the decedent during their lifetime, such as funds held in a joint bank account or credit card accounts opened and maxed out (and not paid) for the benefit of a that suspected person. Sometimes this occurs even by a person who has been given power of attorney or has been appointed Conservator.

These scenarios, although not typical, are of no shock to the court or the probate system. Hence, the laws surrounding this very issue. The Executor must provide very detailed information to the court and must be able to answer the questions of the beneficiaries and heirs. As a result, there is no room for personal vendettas and the Executor cannot make those types of decisions unilaterally. When you are an arm of the Court, you must answer to the Court, and there is no room for dishonesty or sibling rivalry in that report.

Anthony J. Medico, Esq., has practiced law for over 27 years. To ask a question regarding this article, send an e-mail to info@medicoandassociates.com or call us at (203) 661-8151. To read more highly informative Estate Planning articles, visit our website at www.medicoandassociates.com, where you can also download our free Estate Planning Survival Guide. Enjoy.

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